

EXHIBIT 7
Excerpts from
John McGrath
Deposition, Vol.
II, 7/31/19

Deputy Chief John McGrath ~ July 31, 2019
* * * Videotaped Deposition * * *

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3
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5
6 TRINITA FARMER, individually,)

7 Plaintiff,)

8 vs.)

9 LAS VEGAS METROPOLITAN POLICE)

10 DEPARTMENT, a political)

11 Subdivision of the State of)

12 Nevada; KENNETH LOPERA,)

13 individually; TRAVIS CRUMRINE,)

14 individually; MICHAEL TRAN,)

15 individually; MICHAEL FLORES,)

16 individually,)

17 Defendants.)

Case No.
2:18-cv-00860-GMN-VCF

**CONDENSED
TRANSCRIPT**

18 VIDEOTAPED DEPOSITION OF

19 DEPUTY CHIEF JOHN MCGRATH

20 Taken on Wednesday, July 31, 2019

21 At 9:38 a.m.

22 Held at Lagomarsino Law

23 3005 West Horizon Ridge Parkway, Suite 241

24 Henderson, Nevada 89052

25 Reported By: Gale Salerno, RMR, CCR No. 542

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3 (Pages 6 to 9)

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<p>1 MR. ANDERSON: Craig Anderson on behalf of 2 Las Vegas Metropolitan Police Department, Officers 3 Crumrine, Tran and Flores. 4 THE VIDEOGRAPHER: Thank you. 5 And the witness may now be sworn in by 6 Gale Salerno for All-American Court Reporters. 7 - - - 8 DEPUTY CHIEF JOHN MCGRATH, 9 having been first duly sworn, was 10 examined and testified as follows: 11 - - - 12 13 EXAMINATION 14 BY MR. LAGOMARSINO: 15 Q. Good morning. Could you please state your 16 name for the record. 17 A. John McGrath, M-c-G-r-a-t-h. 18 Q. Have you ever had your deposition taken 19 before? 20 A. Yes. 21 Q. On how many occasions? 22 A. I don't recall, but at least once for this 23 case. 24 Q. Are you familiar with the instructions and 25 admonitions that go along with depositions?</p>	<p>1 A. Approximately five years. 2 Q. What were your specific job 3 responsibilities with respect to constitutional 4 policing? 5 A. Yeah, I was only there for three months, 6 but in constitutional policing, that captain is part 7 of executive staff. So you're the only person that's 8 not appointed by the sheriff to be part of executive 9 staff and the only captain that's on executive staff. 10 Secondly, there's three parts of 11 constitutional policing: FIT, which is the Force 12 Investigation Team, which investigates use of force 13 and criminal allegations, and makes a report to the 14 district attorney's office, and submits that to them 15 and they decide whether there's any criminal charges. 16 The Critical Incident Review Team, which 17 looks at the tactics the officers employed or the 18 supervisors, to see if there's anything that they 19 could have done better or any policies that need to 20 be changed related to that incident. 21 And then OIO, which is a section that 22 basically is looking out for the officers involved in 23 critical incidents, their welfare. And also they're 24 responsible for putting out awareness reports, which 25 is something that immediately we want to let the</p>
Page 7	Page 9
<p>1 A. Yes. 2 Q. Basically you understand you're under oath? 3 A. Yes. 4 Q. So we'll skip those today. 5 Could you please tell me your current job 6 position? 7 A. I'm a Deputy Chief with Las Vegas 8 Metropolitan Police Department over the Professional 9 Standards Division, which includes Human Resources 10 and Organizational Development, which is all of 11 training. 12 Q. How long have you been in that position? 13 A. About two and a half years. 14 Q. Prior to that, what was your position with 15 Metro? 16 A. I was a captain. 17 Q. And what were your job duties and 18 responsibilities as a captain? 19 A. As a captain I had several different 20 assignments, including Northwest Area Command, 21 Internal Affairs, Criminal Intelligence, and Internal 22 Oversight in Constitutional Policing. Different 23 bureaus within the agency. 24 Q. And how long were you a captain with those 25 responsibilities?</p>	<p>1 department know that we have an issue or a problem 2 with this incident and we want to change their 3 behavior immediately. 4 Q. Is OIO Office of Internal Oversight? 5 A. Yes. 6 Q. When you stated that it's the only captain 7 not appointed by the sheriff, what does that mean? 8 A. So members of an executive staff, deputy 9 chiefs and above, are chosen by the sheriff. You 10 don't test for those positions. And so he appoints 11 you to that position, and then you become an 12 appointed person, a part of the department. 13 Q. What difference does it make if you're not 14 appointed? Is it a merit-based type of -- 15 A. It's merit-based, but you don't have to 16 test, so you're just chosen. So he gets to pick 17 who's on executive staff, but you can be also 18 unappointed and put back to your previous rank of 19 captain. 20 Q. And were you appointed? 21 A. Yes. 22 Q. Who appointed you? 23 A. The sheriff. 24 Q. Which sheriff? 25 A. Lombardo. Sorry.</p>

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6 (Pages 18 to 21)

<p style="text-align: right;">Page 18</p> <p>1 officer?</p> <p>2 A. I don't think so. It's more for ease of --</p> <p>3 well, first of all, these uniforms are more</p> <p>4 expensive. Those uniforms are a little bit more</p> <p>5 durable for officers that are doing different kinds</p> <p>6 of assignments. Like we have our community-oriented</p> <p>7 policing officers who are dealing with the homeless.</p> <p>8 They're getting dirty all the time. Those uniforms</p> <p>9 are washable. These ones are -- have to be</p> <p>10 dry-cleaned.</p> <p>11 So there's different reasons why. They</p> <p>12 just have to be justified to the bureau commander,</p> <p>13 then he has to authorize it.</p> <p>14 Q. Do you know who the bureau commander was</p> <p>15 for the convention center area command at the time of</p> <p>16 Tashii Farmer --</p> <p>17 A. I think it was Captain Pelletier, but I'm</p> <p>18 not 100 percent. And he's the bureau commander right</p> <p>19 now.</p> <p>20 Q. Are you CIT certified?</p> <p>21 A. If I am, it was over 15 years ago. And I'm</p> <p>22 not currently certified. So you have to keep your</p> <p>23 certification up, and I'm not.</p> <p>24 Q. I recall something in your prior deposition</p> <p>25 of you saying once you get to a certain level of</p>	<p style="text-align: right;">Page 20</p> <p>1 him. Even though he had a gun in his hand, I threw</p> <p>2 him on the ground. And as I was holstering my</p> <p>3 weapon, a security guard who was trying to assist me</p> <p>4 shot him.</p> <p>5 Q. Was that security guard with a hotel or</p> <p>6 casino?</p> <p>7 A. It was on Fremont Street. Some private</p> <p>8 security.</p> <p>9 Q. When you were sergeant, did you ever have</p> <p>10 to come onto the scene after one of your patrol</p> <p>11 officers had used deadly force?</p> <p>12 A. Yes.</p> <p>13 Q. On how many occasions?</p> <p>14 A. How many what?</p> <p>15 Q. On how many occasions, approximately?</p> <p>16 A. I don't recall.</p> <p>17 Q. More or less than five?</p> <p>18 A. Probably less than five. And the</p> <p>19 procedures for officer-involved shooting weren't the</p> <p>20 same then that they are now.</p> <p>21 MR. MCNUTT: Weren't, like were not?</p> <p>22 THE WITNESS: Were not the same. They were</p> <p>23 a lot more. This is what we do, this is how the</p> <p>24 investigation is going to go. I mean, back then it</p> <p>25 was investigated by homicide.</p>
<p style="text-align: right;">Page 19</p> <p>1 rank, you don't have to maintain certain</p> <p>2 certifications; is that right?</p> <p>3 A. Right, per POST. And the, you know, it's</p> <p>4 really -- I'm not dealing with day-to-day people that</p> <p>5 are -- have mental health issues, so there's no</p> <p>6 reason to keep my certification up.</p> <p>7 Q. Okay. Any time you need a break today,</p> <p>8 just let us know. We're happy to accommodate you. I</p> <p>9 anticipate today going about anywhere from two to</p> <p>10 three hours. So just let us know. Okay?</p> <p>11 A. Okay. I don't know if I have two to three</p> <p>12 hours' worth of information, but you can ask me.</p> <p>13 Q. Have you ever been involved personally in a</p> <p>14 deadly force incident?</p> <p>15 A. I haven't used deadly force, but I was</p> <p>16 involved in an in-custody death a long time ago.</p> <p>17 Q. And what do you recall about that</p> <p>18 incident?</p> <p>19 A. Sure. It was a subject with a gun that I</p> <p>20 was trying to get to put the gun down. And he</p> <p>21 refused. He had the gun in his hand, and there was a</p> <p>22 language issue. He spoke Spanish and was highly</p> <p>23 intoxicated and wasn't understanding what I was</p> <p>24 telling him to do.</p> <p>25 So I got close enough to get my hands on</p>	<p style="text-align: right;">Page 21</p> <p>1 BY MR. LAGOMARSINO:</p> <p>2 Q. Have you ever gone to the scene as either a</p> <p>3 sergeant or a lieutenant for a death that arose out</p> <p>4 of some kind of a neck restraint?</p> <p>5 A. I don't recall any.</p> <p>6 Q. As you sit here, do you recall any deaths</p> <p>7 in your career -- strike that.</p> <p>8 While employed at Metro, do you recall any</p> <p>9 deaths caused by any Metro officer as a result of any</p> <p>10 kind of a neck restraint?</p> <p>11 A. So I know of several cases that were</p> <p>12 brought to my attention in the last deposition that I</p> <p>13 was asked questions about. And I'm aware of those</p> <p>14 cases, but I wasn't involved and don't know the</p> <p>15 details of how exactly it was determined the person</p> <p>16 died because was it the neck restraint, was it the</p> <p>17 intoxication of their either alcohol or drugs in</p> <p>18 their system, and was there other things that</p> <p>19 happened, or was it a physical issue that the person</p> <p>20 had.</p> <p>21 So I know that the person ended up</p> <p>22 deceased, but I don't know the exact determination of</p> <p>23 how that happened.</p> <p>24 Q. Okay. And how many of those do you recall?</p> <p>25 A. I think there was two or three.</p>

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7 (Pages 22 to 25)

<p style="text-align: right;">Page 22</p> <p>1 Q. And those -- and we'll get to those later</p> <p>2 in the deposition today.</p> <p>3 A. Okay.</p> <p>4 Q. Independently, do you recall any others?</p> <p>5 A. No. I think I remember the one that</p> <p>6 happened before I joined the department, Charles Bush</p> <p>7 maybe.</p> <p>8 Q. What do you recall about that?</p> <p>9 A. Vice officers put a neck restraint on</p> <p>10 someone who was fighting with them and the person</p> <p>11 ended up dying. And so I don't know, was that</p> <p>12 improperly applied neck restraint or were there other</p> <p>13 issues involved, but that was a common one that was</p> <p>14 talked about on the agency.</p> <p>15 Q. In terms of your responsibilities of</p> <p>16 overseeing training, are there prior neck restraint</p> <p>17 incidents that are used as part of the training</p> <p>18 process now?</p> <p>19 A. I don't think that we generally talk about</p> <p>20 specific incidents in training going back 20 or more</p> <p>21 years.</p> <p>22 Q. Okay.</p> <p>23 A. And I certainly -- I don't think that</p> <p>24 that's how we train. We don't train about, you know,</p> <p>25 specific incidents that if you do this, because of</p>	<p style="text-align: right;">Page 24</p> <p>1 people want to go to. But when they ask you to go</p> <p>2 there, you kind of have to take that assignment.</p> <p>3 And it's actually you learn a lot in</p> <p>4 internal affairs. Criminal intelligence is more</p> <p>5 about knowing how to understand and give confidential</p> <p>6 briefings to the sheriff and being trusted with</p> <p>7 confidential investigations. And so I think that</p> <p>8 based on that assignment, that's why I was asked to</p> <p>9 do the next assignment.</p> <p>10 So it's more of a career progression of</p> <p>11 looking at what you're good at and what the sheriff</p> <p>12 trusts you with.</p> <p>13 Q. Okay. Are you familiar with the Department</p> <p>14 of Justice COPS assessment that was performed</p> <p>15 approximately 2012?</p> <p>16 A. Yes.</p> <p>17 Q. Did you have participation in that process?</p> <p>18 A. Yes.</p> <p>19 Q. Generally what was your participation?</p> <p>20 A. I just participated in different groups,</p> <p>21 giving feedback on use of force and use of force</p> <p>22 policy. I wasn't one of the main instructors or</p> <p>23 anything like that. But certainly was involved in</p> <p>24 ensuring that that process was done correctly.</p> <p>25 Q. Did you interact with individuals from the</p>
<p style="text-align: right;">Page 23</p> <p>1 this incident, this will happen.</p> <p>2 Q. Okay. Have you ever applied an LVNR?</p> <p>3 A. Only in training.</p> <p>4 Q. Tell me about that.</p> <p>5 A. Well, as an officer, you are trained to use</p> <p>6 the LVNR throughout the academy, and then you're</p> <p>7 recertified every year how to do the LVNR and then</p> <p>8 different ways and circumstances to use it.</p> <p>9 I just never found the time appropriate in</p> <p>10 my use of force to use that. Most of the people that</p> <p>11 I use force against decided to run and not fight.</p> <p>12 Q. In terms of your responsibilities with the</p> <p>13 IOCP.</p> <p>14 A. Uh-huh.</p> <p>15 Q. How did you get assigned to that? Did you</p> <p>16 volunteer for that?</p> <p>17 A. No. I guess they -- the sheriff asked me</p> <p>18 to go there. So I guess somebody recommended me to</p> <p>19 go there.</p> <p>20 Q. Did you want to go there?</p> <p>21 A. Well, yes. It's a -- it's kind of a</p> <p>22 promotion, I guess. So but it's an important</p> <p>23 assignment. You know, but all the assignments I had</p> <p>24 outside of patrol I was asked to go to, too. You</p> <p>25 know, internal affairs is not the assignment most</p>	<p style="text-align: right;">Page 25</p> <p>1 Department of Justice?</p> <p>2 A. Yes. I participated in interviews and</p> <p>3 things like that.</p> <p>4 Q. And who came out from the DOJ? Was it</p> <p>5 attorneys or agents?</p> <p>6 A. My recollection would be people from the</p> <p>7 COPS office were different -- they were all</p> <p>8 civilians, but I think that some of them did have</p> <p>9 legal training or legal background.</p> <p>10 But some of the interviews were like this</p> <p>11 where you would have different people asking you</p> <p>12 questions, and I couldn't tell you what all their</p> <p>13 backgrounds were.</p> <p>14 Q. Okay. Do you know how many assessments</p> <p>15 COPS performed on Metro? I mean written assessments</p> <p>16 they provided, I guess?</p> <p>17 A. I don't recall the exact number, but there</p> <p>18 was a lot.</p> <p>19 Q. So I'm familiar, there was the first report</p> <p>20 that came out that had a lot of recommendations and</p> <p>21 assessments. And then there was, like, a six-month</p> <p>22 follow-up that came out after that.</p> <p>23 Were you familiar with additional ones that</p> <p>24 were provided to Metro?</p> <p>25 A. I may have read additional follow-ups, but</p>

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8 (Pages 26 to 29)

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1 I know that all the recommendations that we were
2 tasked with were done other than the ones that we
3 decided were not -- didn't apply to our agency.

4 Q. Without having the benefit of having those
5 in front of you, do you recall which ones or any of
6 them that you decided were not going to be applied?

7 A. I used to know. But I don't recall right
8 off the top of my head. And they were decided by the
9 sheriff that, okay, this is something that we're not
10 going to follow. And there was only a couple of
11 those.

12 Q. That was Sheriff Gillespie at the time?

13 A. I believe so, yes.

14 (Exhibit 1 was marked for
15 identification.)

16 BY MR. LAGOMARSINO:

17 Q. I've provided you with Exhibit 1. This is
18 a document that's been produced by Metro in this
19 case.

20 I can tell you it was our office that
21 placed the highlighting on here.

22 A. Okay.

23 Q. Go ahead and just -- I understand there's
24 quite a few pages here. Have you seen Exhibit 1
25 before?

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1 cities within the United States above a certain
2 number of population or officers are involved in the
3 major city chiefs.

4 Q. Were you ever part of any discussions
5 internally in a meeting type of a setting where the
6 topic was whether to allow the use of the LVNR at
7 all?

8 A. Yes.

9 Q. How many do you recall?

10 A. I think that -- I would say a couple. But
11 not more than three. But it was more of a discussion
12 about, okay, these are the changes we're
13 recommending, and there was a give and take of why
14 are you saying we should keep it versus change it to
15 a lesser -- a lesser part of the policy where we
16 reduced it from you can't use it in these
17 circumstances but you can and how to simplify it.

18 So it was an overall discussion about are
19 we going to keep it, and if we are going to keep it,
20 are we going to change policy at all.

21 Q. And how does that work in terms of the
22 recommendation and -- like, who makes a
23 recommendation and who makes the decision?

24 A. So I think that it was tasked to IOCP to
25 make the changes in the use of force. But I think

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1 A. No. I don't think so.

2 Q. Well, let me ask you generally, are you
3 aware that Metro conducted research after the Farmer
4 incident regarding whether -- strike that --
5 assessing other agencies who may have allowed the use
6 of the LVNR?

7 A. Yes.

8 Q. How did you become aware of that?

9 A. So when the sheriff said, hey, we need to
10 look at LVNR, and part of that included serving other
11 agencies, and then looking at our policy and seeing
12 if we need to make any changes in policy.

13 As part of training -- training is involved
14 in that, the use of force committee which looks at
15 the changes at the use of force.

16 And then because of how high profile this
17 case was, that I became involved in that.

18 So in other words, I wasn't involved in
19 creating the questions or -- but I did see this now
20 that I look at it. But I didn't review every one.
21 It was more of the summary of what the agencies
22 produced that I was aware of.

23 Q. Okay. What is the Major City Chiefs
24 Association?

25 A. I think it's just what it says. Major

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1 that it was also involving the use of force committee
2 which involves people from outside IOCP to be
3 involved, too. Which includes a lot of training.

4 The actual trainers who were teaching LVNR
5 and then the trainers wouldn't be involved in the
6 survey, but they would just be reading the survey and
7 looking at the results of the survey and policies
8 from other agencies that they would look at and maybe
9 change some of the wording because someone may have
10 better wording than we have. So we're always trying
11 to get to the best policy that we can.

12 Q. What is your personal opinion on the use of
13 the LVNR as a use of force option at Metro?

14 MR. ANDERSON: Objection. Form.

15 Go ahead and answer.

16 THE WITNESS: I think that there are times
17 when it's appropriate to use and the ease of it makes
18 it better for the officers to use the least amount of
19 force as possible to make someone comply with their
20 direction.

21 And there are officers that are better at
22 it than others and feel more comfortable with it.
23 But that's no different than some of our other tools
24 that we use.

25 Some officers like the Taser. Some

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9 (Pages 30 to 33)

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<p>1 officers like to go hands-on. Some feel more 2 comfortable with LVNR. 3 And I think that was one of the reasons why 4 we didn't take it away is there are situations where 5 someone is facing away from you that an officer can 6 use the LVNR that's the best tool for that situation 7 in that scenario, and we didn't want to take that 8 away from officers. 9 BY MR. LAGOMARSINO: 10 Q. Okay. Now, you had mentioned earlier in 11 your testimony that after the Farmer incident, the 12 policy was changed to where there were certain 13 circumstances where the LVNR could be used before but 14 could now not be used. 15 A. Right. 16 Q. And I'm assuming that has to do with 17 intermediate level of force options and those type of 18 things? 19 A. Right. 20 Q. Are you able to, without having the policy 21 in front of you -- and understanding you probably 22 don't have a photographic memory -- able to 23 articulate the differences in the policies at this 24 point? 25 A. So the basics of it is, is you could use</p>	<p>1 page 24, it's going to be -- it was Exhibit C that 2 was attached to the responses. And then after that 3 there are some pages that Metro produced with 4 statistics and data. 5 Do you have those in front of you? 6 A. Yes. 7 Q. Have you ever seen these statistics before? 8 A. Yes. 9 Q. And in what context have you seen these 10 statistics? 11 A. So I would say that officer of internal 12 oversight, constitutional policing produces a report 13 of use of force yearly, and then they also produced 14 five year reports that I've seen. 15 Q. Do you know when that started? 16 A. No. 17 Q. So kind of going through the bullets here 18 on the first page, it says, "The following statistics 19 include LVNR data from 2012 year to date 2017." It 20 says: "92 percent of LVNRs are performed by police 21 officers, 8 by correction officers." 22 Next bullet it says: "On average, the LVNR 23 was effective 68 percent of the time. Thus far in 24 2017 the technique has been effective 57 percent of 25 the time." And this was year-to-date through May 15</p>
Page 31	Page 33
<p>1 the LVNR as a restraining hold and now you can't. 2 Someone has to be aggressively resisting you to be 3 able to use the LVNR. 4 MR. LAGOMARSINO: Counsel, we've premarked 5 these so we're going to go a little out of order. 6 This is going to be Exhibit 8. 7 (Exhibit 8 was marked for 8 identification.) 9 BY MR. LAGOMARSINO: 10 Q. I've handed you Exhibit 8, which is a 11 compilation type of an exhibit. 12 The first page for the record is Defendant 13 Las Vegas Metropolitan Police Department's First 14 Supplement to Responses to Plaintiff's First Set of 15 Requests for Production of Documents. 16 And going to page 12, the plaintiff asked 17 for copies of all use of force reports filed by 18 members of Las Vegas Metropolitan Police Department 19 from 2004 to the present. Metro initially objected. 20 The parties went through a process of meeting and 21 conferring and narrowing that time period, and then 22 produced certain statistics. So I want to ask you 23 about those statistics here. 24 So if you would go -- this goes all the way 25 to page 24. If you go to the next page after</p>	<p>1 of 2017, which was I believe just prior to the 2 incident in this case. 3 What does it mean -- what does the word 4 "effective" mean in this context when they say it's 5 68 percent effective? 6 A. I believe it means the subject -- the 7 technique was effective. The subject was taken into 8 custody without any other technique or tool having to 9 be used. 10 Q. Do you know if that term -- obviously 11 effective is a fairly -- 12 A. Broad. 13 Q. -- broad term, correct. Thank you. 14 Do you know if that term is defined 15 anywhere if it's effective in this context? 16 A. I don't know where it's defined, but I'm 17 sure there had to be a definition of it to be able to 18 come up with that statistic. 19 But you're right, it is broad, and that 20 what could be effective to me might not be effective 21 to someone else. Because to me an LVNR that's 22 effective means that the subject stopped resisting, 23 and I was able to take him into custody. 24 But if it didn't work and I had to go to a 25 different tool, does that mean it's effective or</p>

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10 (Pages 34 to 37)

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1 ineffective? It might just mean that it was easier
2 to use something else. Or another officer arrived
3 and we're able to use hands-on to take that subject
4 into custody. So it's really hard to determine
5 effectiveness.

6 Q. With respect to these statistics, it looks
7 like at least they were generated starting in 2012
8 based on this document.

9 Is that your understanding, at least from
10 2012?

11 A. Yes. And I think that might have to do
12 with this COPS intervention.

13 Q. And then would these statistics be
14 considered on a yearly basis when they're generated
15 by Metro?

16 A. Yes.

17 Q. And you mentioned they would do five-year
18 data as well?

19 A. Yes.

20 Q. So if this is a five-year data report,
21 would you have seen this particular document?

22 A. So I've seen five-year reports, but I can't
23 say specifically. I saw 2012 to 2017. But I know I
24 just reviewed the 2018 report; and so in other words,
25 five-year reports continue on.

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1 MR. ANDERSON: Objection. Form.

2 Go ahead.

3 THE WITNESS: Well, based -- I mean, I
4 can't recall exactly all the things that were used in
5 use of force on this case because I know there were
6 strikes, there was Taser and there was LVNR.

7 BY MR. LAGOMARSINO:

8 Q. Right.

9 A. So to me, the effectiveness of all of those
10 together I would say the subject was taken into
11 custody and handcuffed, but some of those techniques
12 were ineffective, and that's why they went to other
13 techniques.

14 Now, overall, I would say that use of force
15 was not effective. Obviously because -- and most use
16 of forces appear -- don't appear like they do in
17 training.

18 But I would say that the LVNR in this case
19 was probably not effective.

20 Q. Do you receive reports either on a daily,
21 weekly, monthly or other regular basis that summarize
22 media reports that could be perceived as negative
23 towards Metro?

24 A. As part of staff, PIO does a report that
25 tells us any time Metro is in the media. So not just

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1 Q. I see what you're saying. So they will go
2 2013 to '18?

3 A. Yes.

4 Q. '14 to '19?

5 A. Right.

6 Q. Do documents that are attached here appear
7 to be true and correct copies of the documents
8 generated by Metro with respect to LVNR statistics?

9 A. Yes.

10 Q. Are other use of force options evaluated
11 for effectiveness the same way that the LVNR is
12 evaluated?

13 A. I believe so. But I'm not sure where the
14 effective number comes from. Because it might come
15 from the officer's opinion, is it effective? Or I
16 don't know if it's evaluated in other ways. So I
17 wish I did know. I could tell you.

18 Q. I'm going to ask you a hypothetical
19 question here. There's a difference of opinion in
20 this case, as I'm sure you've heard, as to whether it
21 was a rear-naked choke that was applied or an LVNR
22 that was applied.

23 Assuming hypothetically that it was an LVNR
24 that was applied, would you consider the use of that
25 technique effective in this case?

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1 use of force.

2 Q. So even if it was, like, a car accident and
3 somebody is interviewed on the scene from Metro?

4 A. I'm not aware of any car accidents, and I
5 wouldn't review that one because I don't have
6 relation to that.

7 But the example is the one that was in the
8 media, just I think it was yesterday or the day
9 before, from LVNR that was applied to a water seller
10 on the Strip. And that was from 2013. And it wasn't
11 immediately apparent that it was from 2013 when they
12 put it in the media. It looked like it just
13 happened. But it was from five years ago and the
14 technique was applied correctly. Whether or not the
15 water seller needed to be LVNR'd, I don't know. But
16 the technique worked and it was applied
17 appropriately.

18 You know, the question is whether we need
19 to have someone who's conducting a misdemeanor crime
20 LVNR'd. That's separate from was the technique
21 applied correctly and did it work, to me.

22 Q. Right. I saw the video. And it seemed
23 like it was a pretty good angle to see what occurred
24 and you can see the positioning of the --

25 A. Right.

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11 (Pages 38 to 41)

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1 Q. -- hands and so forth. And of course, the
2 events leading up to the application were not
3 recorded. So as you say, it's hard to say whether it
4 was necessary or not.

5 A. And we didn't have body cameras at that
6 time so you couldn't see the interaction between the
7 officers and the person.

8 Q. In this video, did the subject pass out?

9 A. I think he did. But I sort of dismissed it
10 when I heard it was in 2013.

11 So I'm aware of it and I saw the technique
12 was applied correctly, but I didn't get really that
13 deep into it. But that's an example of stuff that is
14 sent out by the PIO to us to say, hey, this is in the
15 media. So you're aware of it.

16 Q. And what do you do with that? Or is it
17 just more of an awareness thing?

18 A. Yes. More of an awareness thing. But I
19 was told by someone else, I don't remember who, but
20 that the LVNR was done right, and I looked at it and
21 I was like okay, and I was just not that concerned
22 with it.

23 Q. Do you know if there was a lawsuit in that
24 case?

25 A. I think there was. And I think it was

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1 that Metro sent out questions regarding the LVNR to
2 other agencies, have you ever received e-mails from
3 other agencies about the use of the LVNR?

4 A. I'm sure we have, but I can't recall a
5 specific agency or time. But it's very common for
6 police agencies to share information on use of force
7 or other policies that we use and what is the best
8 wording or techniques to be used throughout policing.

9 Q. Okay. I want to speak a little bit in
10 generalities for the next question. So if I'm wrong
11 on the language or the terms of art, please let me
12 know.

13 But it's my general understanding that if
14 an officer is facing a situation where he or she is
15 faced with deadly force being used against them,
16 there really is no type of force that they're
17 precluded from using to save their own life or defend
18 themselves; is that correct?

19 A. I'm sorry, that was a long question. I
20 think it was correct.

21 Q. It's like one of those Robert Mueller
22 questions, right?

23 So is there any use of force option that's
24 taken off the table for an officer if that officer is
25 facing a situation where their life is in danger?

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1 dismissed. But like I said, when I heard it was
2 2013, it didn't just happen, then I wasn't as
3 concerned with it as I would be if it happened a
4 month or a year ago.

5 Q. Okay. Getting to back to the research that
6 we're talking about, about other cities, whether they
7 allow the use of the LVNR or not, do you know how
8 that research was conducted?

9 A. I can tell you generally how they conduct
10 research in OIO, which is they send e-mails out to
11 agencies, hey, I think it was a quick survey, a few
12 questions, hey, could you answer these questions for
13 us. And some agencies respond and some don't.

14 Q. Do you -- strike that.

15 Does Metro ever get those types of e-mails
16 from other agencies as well to your knowledge?

17 A. Yes.

18 Q. And does Metro respond to those?

19 A. Yes. And sometimes I get those and I ask
20 people to respond to them based on who sent it and
21 then who would be the best person to respond for our
22 agency.

23 Q. Have you, knowing that Metro -- strike
24 that.

25 Let me get a clean question here. Knowing

Page 41

1 A. No.

2 Q. Other than that specific situation that we
3 just discussed, an officer facing a life or death
4 situation, were there any opinions that you recall in
5 Metro that the LVNR should be banned except for that
6 situation?

7 MR. MCNUTT: Objection. Form.

8 THE WITNESS: I think there are
9 restrictions in policy of when you can use certain
10 techniques. And I think that we don't want officers
11 to use the LVNR on subjects that have been cap
12 stunned.

13 I can't recall exactly what the other
14 restrictions are. But there certainly are times when
15 we restrict officers from using certain uses of
16 force.

17 BY MR. LAGOMARSINO:

18 Q. Were there any restrictions on the LVNR
19 being used prior to the Tashii Farmer incident?

20 A. Well, just appropriate use of force based
21 on the circumstances of that call. So in other
22 words, every use of force has to be justified by the
23 officer.

24 Q. Did you have an opinion as to whether
25 Officer Lopera appropriately applied force to Tashii

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12 (Pages 42 to 45)

Page 42

1 Farmer?

2 MR. MCNUTT: Objection. Form.

3 MR. ANDERSON: Join.

4 THE WITNESS: So when you're looking at

5 other people's use of force, it's a different

6 standard. You have to -- the officers have to

7 articulate why they used force and why the amount of

8 force was necessary in that case.

9 We didn't really get that from Officer

10 Lopera. So you're looking at it just based on your

11 opinion and not what Officer Lopera articulated.

12 So my opinion was, and I think I stated it

13 in a prior deposition, was that based on the

14 circumstances, most officers would have chased

15 Mr. Farmer. If he walked away and didn't want to

16 talk to you, you would let him walk away.

17 But when he runs away and goes to a part of

18 the casino that most people don't have access to, it

19 makes you think there's something wrong or there's

20 something going on that would make your curiosity

21 pique to the point where you would want to find out

22 what's going on with Mr. Farmer.

23 So I would have no problem with most

24 officers, most officers probably would chase someone

25 who runs away from them.

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1 oh, there he goes? No. I wouldn't do that either.

2 I would want to find out what was going on with

3 Mr. Farmer because now any good officer would want to

4 know why he was acting the way he was and why he was

5 going through that part of the casino.

6 BY MR. LAGOMARSINO:

7 Q. You're familiar, I'm sure, with the laws of

8 trespass, correct?

9 A. Yes.

10 Q. There was -- to your knowledge, are there

11 bright orange letters painted every 50 or 200 yards

12 on the Venetian Hotel that say "no trespassing"?

13 A. No.

14 Q. And to your knowledge, had anybody from the

15 Venetian Palazzo requested Mr. Farmer to leave the

16 premises?

17 A. No.

18 Q. Do you believe that based on the

19 information that you've received in your

20 participation in this case on the use of force board,

21 and that was presented to you, that there was

22 probable cause to arrest Mr. Farmer for trespassing?

23 MR. ANDERSON: Objection. Form.

24 Go ahead.

25 THE WITNESS: When Mr. Farmer was in the

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1 The question is when you catch up to them,

2 what do you do and how much force should you or do

3 you use, and that's based on what crime you

4 articulate that Mr. Farmer has committed. And we

5 didn't get that. So I'm putting myself in that place

6 of Mr. Lopera, Officer Lopera.

7 So I think that -- I think that when you

8 use force, you should use force. In other words, we

9 don't put our hands on someone unless we're using an

10 approved technique because most people don't like

11 when people put their hands on you.

12 So when you make that decision to put your

13 hands on someone, you should put your hands on

14 someone and use a technique to take them to the

15 ground and to put handcuffs on them if you can

16 articulate the justification for an arrest.

17 Because now when you put your hands on

18 someone and you use force, you should have a charge

19 to take them to jail.

20 So I can't get in Officer Lopera's mind to

21 say what he was doing. But I would say that I would

22 not have done it the way that Officer Lopera did.

23 Just me as going back to the way I was trained and

24 the decisions that I would make that night.

25 Now, would I let Mr. Farmer go and be like

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1 coffee shop or wherever he was, there was no probable

2 cause to arrest him for trespassing.

3 When he went through the casino into the

4 back under that -- whatever they call it of the

5 casino, where he probably wasn't supposed to be and

6 wasn't allowed to go, could we have talked to

7 Venetian and say was he supposed to be there, is this

8 an area that you would consider that he was

9 trespassing if he went to, that would take a more

10 thorough investigation for me to find out if I had

11 probable cause to arrest him for trespassing.

12 But based on what I know, I don't think

13 Officer Lopera had enough to arrest him for

14 trespassing.

15 BY MR. LAGOMARSINO:

16 Q. There was -- are you familiar that there

17 was a bright red sign that said "exit" above the

18 doors he went out?

19 A. I don't recall. But I would believe that

20 if you said there was one.

21 MR. LAGOMARSINO: I think we'll just take a

22 quick five-minute break and come back.

23 THE VIDEOGRAPHER: The time is

24 approximately 10:36 a.m. We are going off the

25 record.

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13 (Pages 46 to 49)

Page 46

1 (A recess was taken from 10:36 a.m.
2 to 10:48 a.m.)
3 THE VIDEOGRAPHER: The time is
4 approximately 10:48 a.m. We are back on the record.
5 BY MR. LAGOMARSINO:
6 Q. As part of training, does Metro bring in
7 sometimes outside speakers or experts to provide
8 training to the officers?
9 A. Yes.
10 Q. Are you familiar with the names of any of
11 those experts that Metro may bring in?
12 A. It depends. So the question is kind of
13 broad, but -- we bring in training for all different
14 kinds of classes. Usually use of force is done by
15 our own trainers.
16 Q. Are you familiar with an individual named
17 Dr. William Smock?
18 A. No.
19 Q. Do you know if he's been hired by Metro to
20 provide training?
21 A. I'm not aware of his name or if he's been
22 hired.
23 Q. You have been trained on neck restraints;
24 is that correct?
25 A. Yes.

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1 and then in defensive tactics, and then there are
2 scenarios in field training where officers may use
3 force which includes LVNR. And what happens when --
4 during training when officers use force is a field
5 training officer would discuss with the trainee,
6 okay, what about this technique or that technique,
7 which may include LVNR.
8 But there's no time when a field trainer
9 would say, "LVNR him."
10 Q. Okay.
11 A. It's kind of up to you to use the force
12 that you think is the best for that scenario.
13 But after the scenario, the trainee -- the
14 trainer would say you could have LVNR'd him in that
15 case.
16 Q. Okay.
17 A. That would have been the most appropriate
18 case in that circumstance.
19 Q. And it's fair to say that before the shift,
20 that the field training officer is not going to say,
21 hey, let's go out and look for an LVNR situation
22 tonight?
23 A. Yeah, no. Absolutely not. That would
24 never happen.
25 Q. When you say LVNR is in training, are you

Page 47

1 Q. If the LVNR is applied incorrectly, do you
2 agree that there's a potential for significant injury
3 or death to the subject?
4 A. Yes.
5 Q. What is the Organization Development
6 Bureau?
7 A. What is that?
8 Q. Yes.
9 A. It's the bureau that works for me that
10 basically is over training.
11 Q. What's field training?
12 A. Field training is when an officer graduates
13 the Academy, he goes through field training for a
14 period of time until he graduates training.
15 Q. And is field training basically shadowing,
16 or what exactly is it?
17 A. No. There's three phases of field
18 training, and in each phase the officer gets more and
19 more freedom to become a police officer until at the
20 last phase, where he is shadowed and we call solo
21 beat status. So the officer is allowed to -- is
22 graded, and then when he graduates he's supposed to
23 be able to handle calls by himself.
24 Q. Does field training address LVNRs?
25 A. So LVNR is basically addressed in training

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1 talking about the police academy?
2 A. Yes.
3 Q. And then after the police academy, then
4 there is a series of certification or recertification
5 that has to occur with the LVNR?
6 A. That is correct.
7 Q. What is reality-based training?
8 A. Reality-based training is training officers
9 are required to do where we put them in scenarios
10 where they have to use -- make decisions about what
11 kind of force they should use to resolve that
12 scenario.
13 Q. And is that done on, like, a computer or --
14 A. No.
15 Q. -- or is it live?
16 A. It's hands-on live where we have role
17 players and they go through a scenario. And then
18 they use force or not use force. Or they go
19 hands-on, or they might have to use their gun where
20 they pull their gun out, and then they don't shoot
21 their gun, but where they would decide what kind of
22 force is necessary to resolve that situation. And
23 then they get feedback on how they performed and what
24 they could do differently.
25 Q. Are you familiar with Michael Glen?

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14 (Pages 50 to 53)

Page 50

1 A. Yes.
 2 Q. I forget his rank, is it officer?
 3 A. He got promoted to sergeant now.
 4 Q. And is he a subject matter expert in the
 5 LVNR?
 6 A. Yes.
 7 Q. After this incident, did he create a
 8 training video describing what the LVNR was?
 9 A. I'm not sure when he created the video. So
 10 yes, he created a video. But I thought there was
 11 some videos that he did before this incident, talk
 12 about training, but it could have been after.
 13 Q. Are those videos considered reality-based
 14 training?
 15 A. No. They were in addition to reality-based
 16 training.
 17 Q. Are you familiar specifically with what
 18 reality-based training exists with respect just to
 19 the LVNR?
 20 A. No.
 21 Q. Do you know if there is?
 22 A. I don't think so.
 23 Q. Now, part of your job responsibilities
 24 relate to human resources you alluded to.
 25 A. Yes.

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1 officer may be facing termination and they are
 2 allowed to retire to retain their benefits?
 3 A. So I am familiar with all the different
 4 processes. We have -- we also have a
 5 non-confirmation hearing, which I've done some of
 6 those, and that would apply to people that are on
 7 probation.
 8 And if they resign prior to being
 9 non-confirmed, we say that they resigned.
 10 We allow people to resign prior to
 11 non-confirmation hearing. Like, at any time someone
 12 could resign. They could retire.
 13 But if they resign pending discipline or
 14 non-confirmation, we do note that in labor relations.
 15 Q. So for example, Sergeant Crumrine was not
 16 confirmed, correct? Well, the story continued after
 17 he was not confirmed, correct?
 18 A. That's correct.
 19 Q. So Sergeant Crumrine was on probation as a
 20 sergeant at that time, correct?
 21 A. Right.
 22 Q. And then the decision was made at Metro to
 23 not confirm him?
 24 A. That's correct.
 25 Q. And then he disputed that; is that correct?

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1 Q. And are you the ultimate decision-maker as
 2 to whether somebody is going to be terminated or not?
 3 A. So the human resources part is separate
 4 from my additional duty which is pretermination board
 5 chairman.
 6 So you've kind of conflated those two. But
 7 there's a board that meets. And it is myself as
 8 deputy chief, a commissioned captain and a civilian
 9 director. And each board is -- could be different
 10 people on it.
 11 And then the ultimate decision is the
 12 sheriff. But what happens is I write a memo to him
 13 based on what the board finds and recommend to the
 14 sheriff whatever we recommend. And then he's the
 15 ultimate decision-maker.
 16 And most of the time he agrees with me, but
 17 not all of the time.
 18 Q. Okay. With Officer Lopera, was he allowed
 19 to retire in lieu of being terminated?
 20 MR. MCNUTT: Objection. Form.
 21 MR. ANDERSON: Join.
 22 THE WITNESS: I'm not sure what his -- the
 23 disposition was for him.
 24 BY MR. LAGOMARSINO:
 25 Q. Are you familiar with that process where an

Page 53

1 A. He went to arbitration.
 2 Q. Who was the arbitrator?
 3 A. I don't recall. And I wasn't involved in
 4 the arbitration for that. That was Sheriff Kelly.
 5 Q. Who participates in that arbitration, do
 6 you know? Maybe not that specific one but in general
 7 the arbitration process?
 8 A. So I represent the department in a lot of
 9 arbitrations because I am on the pretermination
 10 board. And they keep calling me in to ask what my
 11 recommendation was and why in the cases I'm involved
 12 in.
 13 So what happens in an arbitration is the
 14 department presents their case to the arbitrator, and
 15 the employee presents his case and the arbitrator
 16 makes a decision. And that applies to all the people
 17 that we terminate.
 18 Q. How is the arbitrator selected?
 19 A. I believe there's a list that the
 20 department submits a number of arbitrators and the
 21 union submits a number of arbitrators and I think
 22 they alternate who chooses. But I'm not exactly
 23 sure.
 24 Q. Okay.
 25 A. I just show up and testify.

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15 (Pages 54 to 57)

Page 54

1 Q. Okay. Ultimately, what happened with
2 Sergeant Crumrine in the arbitration?
3 A. The arbitrator ruled that he did enough to
4 keep his job.
5 Q. So is he now back to being a sergeant?
6 A. He's back to being a sergeant.
7 Q. Did you write the recommendation letter for
8 non-confirmation to Sheriff Lombardo?
9 A. No. That was Sheriff Kelly.
10 Q. And Sheriff Kelly wrote a letter, to your
11 knowledge, to Sheriff --
12 A. He writes a memo to recommend
13 non-confirmation and the sheriff agreed with him.
14 Q. What about with respect to Officers Tran
15 and Flores?
16 A. They weren't on probation, and I don't
17 think that they received any discipline in this case.
18 Q. Have you ever heard of an officer being
19 terminated for improperly using an LVNR?
20 A. I don't think so.
21 Q. You testified earlier that some of the
22 technology part of your responsibilities has been
23 shifted over. Does that include body cameras?
24 A. Yes.
25 Q. Were you in charge of oversight of body

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1 Q. When would you feel that it was appropriate
2 pursuant to Metro policy for any officer who was on
3 the scene to shut off their body camera?
4 A. So officers are required to keep the body
5 camera on while they're involved with a suspect.
6 When the incident is over, they can turn the body
7 camera off or when they're involved in discussions
8 with their sergeant about what happened.
9 Q. They're allowed to turn it off?
10 A. Yes.
11 Q. Are they allowed to turn -- strike that.
12 Are officers allowed to turn their body
13 camera off when they're having discussions with other
14 officers about what happened?
15 A. Yes.
16 Q. Why is that?
17 A. Because -- do you mean why are they allowed
18 to turn it off?
19 Q. Right.
20 A. So the body camera policy, although it was
21 written before I was involved, is meant to capture
22 what happened during that incident and not to
23 infringe on the officer's rights about to discuss why
24 they did what they did.
25 Q. You're on the use of force board, right?

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1 cameras in May of 2017?
2 A. Yes.
3 Q. What's the general purpose of having the
4 body camera being activated?
5 A. So the officers' actions can be captured
6 not only for the department but for the public to be
7 able to see how officers interacted during this call.
8 Q. Have you reviewed body camera footage in
9 this case?
10 A. Yes.
11 Q. When would you feel it would be appropriate
12 for an officer who was involved in this case to turn
13 off the body camera? And let me lay some foundation
14 there.
15 So you had Officers Tran, Flores and Lopera
16 and Sergeant Crumrine involved with Tashii Farmer,
17 correct?
18 A. Yes.
19 Q. And then a whole host of other officers
20 showed up at the scene including some that ultimately
21 attempted chest compressions, correct?
22 A. Yes.
23 Q. And then at some point emergency personnel
24 arrived and Tashii Farmer was taken away, correct?
25 A. Yes.

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1 A. Yes.
2 Q. Is that the same thing as a tactical review
3 board?
4 A. So I'll explain the use of force board. So
5 there is, the use of force board involves civilians.
6 There's four civilians involved in every use of force
7 board. And it is their job to determine, along with
8 three members of the department, whether the use of
9 force was justified or not.
10 And there's four dispositions that we use.
11 I guess I could try to remember them if I can.
12 Q. Sure.
13 A. Administrative approval, tactics
14 decision-making, policy training failure or
15 administrative disapproval.
16 And so what we're trying to determine is
17 was the use of force justified by law and within
18 policy. And then after that part's over, that's the
19 use of force board, the tactics decision -- the
20 tactics are then reviewed in the tactics review
21 board.
22 Q. And is there a disposition from the tactics
23 review board?
24 A. What happens in the tactics review board is
25 each officer's actions and supervisor's actions are

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17 (Pages 62 to 65)

Page 62	Page 64
<p>1 board, and then Sheriff Kelly writes a memo to the 2 sheriff. And so he's more involved in the 3 dispositions of what happens to the people involved. 4 In other words, training or some kind of 5 discipline or for Sergeant Crumrine, he was the 6 non-confirmation recommendation was made to the 7 sheriff. But that's all done confidentially between 8 Sheriff Kelly and the sheriff. So I don't get to see 9 that. 10 Q. So do you know what the dispositions were 11 for those four individuals? 12 A. I only know that Crumrine was recommended 13 that he be non-confirmed as a probationary sergeant. 14 And I don't know the other ones. Although we did 15 discuss it. 16 Q. And are the deliberations recorded? 17 A. No. 18 Q. So then going to the tactical review board 19 aspect of it, is CIRT also making a presentation in 20 that setting as well? 21 A. So what happens is CIRT makes their 22 presentation for the use of force board. And then we 23 vote on the use of force. And then they come back 24 and do another presentation related to the tactics, 25 tactical review board.</p>	<p>1 Q. And is it your opinion that Sergeant 2 Crumrine did not do enough to intervene? 3 A. It's still my opinion, even though the 4 arbitrator didn't agree with me. 5 Q. Do you know how the citizens are selected 6 to be on those boards? 7 A. I don't know how the process works. 8 Q. Do you recall any of the names of the 9 citizens on the Lopera, Crumrine, Tran, Flores board? 10 A. I don't recall. There's been too many 11 boards since then. I know that it's spelled out in 12 the policy of how long they can be on the board and 13 they do, I think they serve a two-year term or 14 three-year term. I don't know. 15 Q. To your knowledge, do they -- do they apply 16 to be on the board? 17 A. Yes. 18 Q. And are they compensated? 19 A. No. 20 Q. Do they have voting rights? 21 A. Voting rights? 22 Q. As to a determination of the disposition in 23 the -- 24 A. Yes. That's the whole purpose. There's 25 more citizens voting than department members. So</p>
Page 63	Page 65
<p>1 So it's separate. 2 Q. Okay. Were there any findings that you can 3 recall from the tactical review board that you can 4 share? 5 A. I don't recall. I'm sorry. 6 Q. That's okay. 7 Specifically let me just ask you your 8 opinion. Did Lopera utilize deescalation techniques? 9 A. I don't recall any deescalation that I saw 10 him use. 11 Q. And did he lack deadly force? 12 MR. ANDERSON: Objection. Form. 13 MR. MCNUTT: Objection. Form. 14 THE WITNESS: I did not see him use deadly 15 force. 16 BY MR. LAGOMARSINO: 17 Q. Were there any training issues that you had 18 issues with? 19 A. I'm sure there were. I don't recall 20 specifics. And more concerning Sergeant Crumrine 21 than the officers. 22 Q. You testified in your prior deposition 23 about Sergeant Crumrine not doing enough to 24 intervene; is that correct? 25 A. Yes.</p>	<p>1 they have four votes and we have three. 2 But generally, the votes are pretty 3 unanimous. Not always, but I run the use of force 4 board just -- it's kind of the way the policy works. 5 The assistant sheriff runs the board, but when it 6 comes to the deliberations, he doesn't vote and I run 7 the board and explain the dispositions to everyone on 8 the board before we vote. 9 And we discuss and deliberate just like any 10 other group. 11 Q. Do you recall whether or not the duty to 12 intervene was evaluated with respect to Tran and 13 Flores? 14 A. It was evaluated -- this is all part of the 15 tactics review board not the use of force 16 disposition -- use of force board. Yes, it certainly 17 was discussed. 18 Q. And did the review board, the tactics 19 review board, determine that Tran and Flores 20 satisfied their duty to intervene? 21 A. I don't know exactly what the disposition 22 was for Tran and Flores. That was -- so it's not 23 100 percent one way or the other. But that would be 24 written by Sheriff Kelly. 25 I can expand on that if you would like.</p>

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18 (Pages 66 to 69)

Page 66

1 Q. Yes, please.
2 A. So it was our opinion that Tran and Flores
3 are dealing with Farmer, and the duty to intervene
4 would be more on Sergeant Crumrine because he was
5 standing up overlooking the whole scene. Because if
6 you're trying to handcuff someone, your focus is on
7 that. And one who is standing above that would have
8 a better view of who is doing what and how or to what
9 to do to intervene.
10 In other words, Sergeant -- and that's what
11 I meant earlier when I said that Sergeant Crumrine
12 didn't understand his role in overseeing this use of
13 force.
14 Q. We've had a number of witnesses address the
15 duty to intervene so I'm going to go through it
16 pretty quickly here.
17 A. Okay.
18 Q. The duty to intervene isn't just saying
19 "stop." It doesn't end there, correct?
20 MR. ANDERSON: Objection. Form.
21 THE WITNESS: I agree with you. It's more
22 than just saying "that's enough" or "stop."
23 BY MR. LAGOMARSINO:
24 Q. In other words, if the duty to intervene
25 requires the use of a physical act such as,

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1 her by a police officer who is trying to effect a
2 lawful arrest, that the citizen has a right to use
3 force against the officer to defend themselves?
4 MR. ANDERSON: Objection. Form.
5 THE WITNESS: I'm not sure if you're asking
6 me is it my opinion or do we train that way.
7 BY MR. LAGOMARSINO:
8 Q. Do you train on that?
9 A. I don't believe we train on what citizens
10 can or can't do when officers are using inappropriate
11 or excessive force. No, we don't train that.
12 Q. Does Metro utilize POST training, Peace
13 Officer Standards and Training?
14 A. Yes. Since you brought that up, I'm on the
15 state POST board appointed by the governor. So
16 that's another duty I forgot since you reminded me,
17 though.
18 Q. Are you familiar with Detective Alsup and
19 Detective Colon?
20 A. Yes.
21 Q. They performed the FIT investigation in
22 this case?
23 A. That's correct.
24 Q. Have you had experience interacting with
25 them in the past?

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1 hypothetically, removing somebody's hand from an
2 LVNR, that could be required in any given situation?
3 MR. ANDERSON: Objection. Form.
4 MR. LAGOMARSINO: That is a bad question.
5 BY MR. LAGOMARSINO:
6 Q. Talk to me about your understanding of how
7 the duty to intervene can be satisfied by using
8 physical acts.
9 MR. ANDERSON: Objection. Form.
10 THE WITNESS: Sure. I think that a duty to
11 intervene is more than just saying "stop." It may
12 mean using hands, your hands, or directing someone to
13 stop the action that's inappropriate.
14 BY MR. LAGOMARSINO:
15 Q. In terms of training Metro officers, are
16 they trained that a citizen has the right to use
17 reasonable force in self-defense against an officer
18 who is using excessive force against that citizen?
19 MR. ANDERSON: Objection. Form.
20 MR. MCNUTT: Join.
21 THE WITNESS: I don't believe that we train
22 that.
23 BY MR. LAGOMARSINO:
24 Q. Is your understanding that if a citizen is
25 having excessive force used against them or him or

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1 A. Yes.
2 Q. Also did you have experience interacting
3 with Sergeant McDonald?
4 A. Yes.
5 Q. Did Sergeant McDonald oversee -- strike
6 that.
7 Did Sergeant McDonald oversee Detective
8 Alsup and Detective Colon?
9 A. Yes.
10 Q. Do you have any criticism of their
11 investigation in this case?
12 A. No.
13 Q. Have you ever had any criticism of them?
14 A. I think I answered this before in the last
15 deposition. That I don't know about criticism,
16 because criticism is kind of a broad term.
17 So, yes, I've given them feedback on their
18 performance and things that they could do better.
19 But I think they're excellent detectives. And
20 Sergeant McDonald has worked for me here and also
21 worked for me in convention center. He's a good
22 sergeant.
23 Q. Did you have any criticism or feedback for
24 them in this particular case?
25 A. I don't recall any.

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* * * Videotaped Deposition * * *

19 (Pages 70 to 73)

Page 70

1 Q. You were asked the following question in
2 your last deposition so I want to see if you still
3 have the same position.

4 Hypothetically, a sergeant of an officer
5 tells his officer to release a hold twice, does that
6 sergeant have a duty thereafter, having asked him
7 twice to release the hold, to check and make sure
8 that he's released the hold?

9 MR. ANDERSON: Objection. Form.

10 THE WITNESS: Yes. I think he should.

11 BY MR. LAGOMARSINO:

12 Q. Did you have an opinion as to whether
13 Lopera's use of the Taser was excessive on
14 Mr. Farmer?

15 MR. MCNUTT: Objection. Form.

16 THE WITNESS: It was excessive.

17 BY MR. LAGOMARSINO:

18 Q. And did you have an opinion as to whether
19 Lopera striking Mr. Farmer was excessive?

20 MR. MCNUTT: Objection. Form.

21 THE WITNESS: That was a little bit harder
22 to determine because I think that the use of the word
23 "strike" is something that's hard to determine
24 because they said 10 to 12 strikes, and it was hard
25 to say whether, how many times Officer Lopera struck

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1 And then through that chain of command all
2 the way up to the under sheriff and then it would be
3 approved.

4 Q. What was your opinion on the use of force
5 policy that was in effect at the time of the Tashii
6 Farmer incident?

7 MR. ANDERSON: Objection. Form.

8 BY MR. LAGOMARSINO:

9 Q. In terms of being simple or hard to
10 understand or somewhere in between?

11 A. So I didn't have a problem with the policy
12 at the time. But during the review when they made --
13 recommended changes, I agreed with those changes that
14 it was simpler and easier to understand for the
15 officers and it was probably a better policy.

16 But it's my opinion on all the times we
17 make changes, we make changes to make the policy
18 better and to make it easier to understand.

19 MR. LAGOMARSINO: Do you want to take
20 another five-minute break? Normally we take a lunch,
21 but I'm only going to have about probably another
22 half hour left. So do you want to just power through
23 instead of taking a long lunch? It's up to you.

24 MR. ANDERSON: It's up to you.

25 THE WITNESS: It's up to me?

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1 Mr. Farmer. He certainly threw a lot of punches, but
2 I don't know how many actually struck him.

3 BY MR. LAGOMARSINO:

4 Q. Can you talk in general, as you did at the
5 last deposition, about how Metro changes policies
6 specifically with respect to the use of force?

7 A. Sure. We're always trying to get better
8 with our policies and make them simple and easy for
9 officers to understand. And usually use of force
10 policies are changed by IOCP as part of their job.
11 In other words, they're the ones that oversee use of
12 force for the agency. But they're not always the
13 ones that have ideas about changing the policy.

14 But it would flow through them. And in
15 general, use of force policies changed as a result of
16 a critical incident.

17 Policies in general are -- the wording has
18 changed. The recommendation has changed to make it
19 better either through OIO or through the use of force
20 committee. The policy has changed. It goes out for
21 review. The people give feedback on what the
22 policy -- if it's better or more effective. And then
23 that feedback is taken in and the policy goes back
24 out for a chain of command review through OIO or
25 IOCP.

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1 MR. MCNUTT: I'm going to have an hour
2 after he's done. I mean, it may not take an hour,
3 but I mean, I want you to -- let's budget an hour, so
4 to factor in your decision.

5 THE WITNESS: Well, I would rather have
6 lunch than go another hour and a half, two hours,
7 whatever.

8 MR. LAGOMARSINO: Why don't we take an
9 early lunch. That will give me a chance to pare down
10 my questions even more.

11 THE WITNESS: Okay.

12 MR. LAGOMARSINO: What time do you want to
13 come back? It's 11:30. Do you want to say 12:45?

14 MR. ANDERSON: That's good.

15 THE VIDEOGRAPHER: The time is
16 approximately 11:33 a.m. We are going off the
17 record.

18 (A recess was taken from 11:33 a.m.
19 to 12:54 p.m.)

20 THE VIDEOGRAPHER: The time is
21 approximately 12:54 p.m. We are back on the record.
22 BY MR. LAGOMARSINO:

23 Q. I had an opportunity to pare down a lot of
24 my questions so it will be fairly brief --

25 A. Thank you. I meant that as a compliment.

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* * * Videotaped Deposition * * *

20 (Pages 74 to 77)

Page 74

1 Craig is going to -- go ahead.

2 Q. All right. In this case, are you aware
3 that Brian Yant was the union representative for
4 Kenneth Lopera?

5 A. Yes.

6 Q. Based on your employment with the
7 Department since 1992, were you aware of Brian Yant's
8 involvement in three controversial officer-involved
9 shootings?

10 MR. ANDERSON: Objection. Form.

11 THE WITNESS: No. I was aware of one of
12 them. I don't know -- I might -- if I was reminded I
13 would probably know the other ones. But I know the
14 main one.

15 BY MR. LAGOMARSINO:

16 Q. Okay. Well, I'll ask and I'll rephrase the
17 question because I think the counsel probably had an
18 issue with the word "controversial." So I'll
19 rephrase.

20 Were you aware that Brian Yant was involved
21 in three officer-involved shootings?

22 A. No.

23 Q. You had referenced in answer to your
24 earlier question about a shooting. Did that shooting
25 involve Trevon Cole?

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1 Q. You had no involvement of that from an HR
2 perspective or any other perspective?

3 A. No.

4 Q. I asked you earlier in the deposition about
5 whether your opinion was that the use of the Taser
6 was excessive and whether the striking was excessive,
7 so I'm not going to reask you those questions.

8 Do you have an opinion as to whether the
9 use of the neck restraint by Officer Lopera was
10 excessive in this case?

11 MR. MCNUTT: Objection. Form.

12 THE WITNESS: I think the use of the
13 LVNR -- so I'm sorry, can you just rephrase the
14 question?

15 BY MR. LAGOMARSINO:

16 Q. So I'm going to generally use the term
17 "neck restraint" as opposed to "LVNR" or "rear-naked
18 choke."

19 Regardless of which of those it was, do you
20 believe that Officer Lopera's use of that restraint
21 for the period of time that he utilized it was
22 excessive in this situation?

23 A. Yes.

24 (Exhibit 9 was marked for
25 identification.)

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1 A. Yes.

2 Q. And that was the gentleman who was flushing
3 marijuana down the toilet, and Brian Yant shot him
4 with an AR15 and killed him, correct?

5 A. Yes.

6 Q. Did you have any involvement at all in that
7 investigation, administratively or otherwise?

8 A. No. Nothing.

9 Q. And was it your understanding that Trevon
10 Cole was unarmed?

11 A. Yes.

12 Q. Were you -- if -- I'll try to remind you
13 and see if you can recall. There was an incident
14 with an individual who they referred to as the candy
15 bar robber. And it was alleged that he had stolen
16 some candy from a convenience store. Brian Yant was
17 chasing him and shot him in the back.

18 Were you aware of that particular incident?

19 A. No. I wasn't.

20 Q. And then there was another incident before
21 that where there was an individual some distance
22 away, 20 yards or so, who had a baseball bat in his
23 hand, and Brian Yant shot him.

24 Were you aware of that one?

25 A. No, I'm not.

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1 BY MR. LAGOMARSINO:

2 Q. Earlier in the deposition, I asked you some
3 questions about whether a citizen has a right to use
4 force against an officer to defend him or herself.
5 And I believe it was your testimony that you said
6 that Metro doesn't train on it. So I want to ask you
7 a follow-up to that question.

8 So I've placed in front of you a document
9 that's been produced in this case by Metro, Crumrine,
10 Tran and Flores in the fifth supplement to their
11 initial Rule 26(A)(1)(A) disclosure of witnesses and
12 exhibits.

13 We've produced a number of documents, but
14 I've only handed you the one that I have questions on
15 here.

16 So if you turn to page 14 of the document.
17 Under number 8, it's been identified, some documents
18 produced as LVMPD, Ethical Use of Force Course, LVMPD
19 420 through 719.

20 A. I see that.

21 Q. So we've attached some of those pages here.

22 MR. ANDERSON: Just for the record, Andre,
23 I would say this was produced in our initial
24 disclosures, not the fifth. I don't care but...

25 MR. LAGOMARSINO: No, thank you. Sorry.

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* * * Videotaped Deposition * * *

21 (Pages 78 to 81)

Page 78

1 BY MR. LAGOMARSINO:
 2 Q. In the attachment, do you see the bottom
 3 has something called Bates numbers where it says --
 4 A. Yep, I see it.
 5 Q. So if you go to LVMPD 420, 0420.
 6 A. Okay.
 7 Q. It appears to be a cover page. And it
 8 says: "POST Commission, Peace Officers' Standards
 9 and Training, Ethical Use of Force."
 10 Do you have that in front of you?
 11 A. Yes.
 12 Q. And it says that 2015 on the bottom
 13 left-hand corner.
 14 Does this appear to be a cover page that's
 15 commonly used in training for Metro?
 16 A. No.
 17 Q. Have you ever seen this before?
 18 A. I don't recall ever seeing it.
 19 Q. All right. And then are you aware if Metro
 20 has a course called POST ethical use of force?
 21 A. I don't believe we do. But that doesn't
 22 mean we do or don't. I've never heard of it, but it
 23 could be called something slightly different. When
 24 POST has these courses, we generally meet their
 25 criteria, but we could call it a different name.

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1 Q. Okay. All right.
 2 A. And it might be just included with our use
 3 of force training, and ethical use of force might be
 4 a section. I'm more than guessing but I don't know
 5 for sure.
 6 Q. No, I understand. And just for the record,
 7 we still have a deposition ahead of us where we're
 8 going to have Metro designate certain individuals on
 9 certain training. So my understanding, this is just
 10 based on your personal knowledge.
 11 A. Right.
 12 Q. So going to LVMPD 433. And under number
 13 14, it says: "A person has a right to use
 14 self-defense against an officer's excessive force. A
 15 person has the right to use reasonable force only in
 16 self-defense against an officer who is using
 17 excessive force during a lawful arrest."
 18 Is it your understanding still after
 19 reading that that based on your own personal
 20 knowledge, Metro does not train on this?
 21 A. I'm not aware of any training that we use
 22 for that that contains that language.
 23 Q. Okay. All right.
 24 MR. LAGOMARSINO: I have no further
 25 questions.

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1 EXAMINATION
 2 BY MR. MCNUTT:
 3 Q. Sheriff McGrath, my name is Dan McNutt. We
 4 met earlier. I represent Ken Lopera. I've got a few
 5 questions for you.
 6 A. Thanks. Chief McGrath.
 7 Q. I sorry, Chief McGrath.
 8 A. I just didn't want you to keep going with
 9 the sheriff for your questions.
 10 Q. I don't -- even if I did, I don't think we
 11 could write you in on the ballot.
 12 A. No.
 13 Q. Is being under the influence of a
 14 controlled substance a crime in the state of Nevada?
 15 A. Yes.
 16 Q. Is carjacking a crime in the state of
 17 Nevada?
 18 A. Yes.
 19 Q. Is trespassing a crime in the state of
 20 Nevada?
 21 A. Yes.
 22 Q. Striking a police officer a crime in the
 23 state of Nevada?
 24 A. Yes.
 25 Q. If so, then why did Kelly McMahaill say that

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1 had Tashii Farmer survived this event, that he would
 2 not have faced any criminal charges?
 3 A. I think I would rather have her answer. If
 4 that's a hypothetical, I guess I could answer because
 5 I don't know her exact reasons for saying that.
 6 Q. Fair enough.
 7 MR. ANDERSON: Just for the record, it was
 8 Kevin McMahaill.
 9 BY MR. MCNUTT:
 10 Q. My apologies, Kevin McMahaill.
 11 Does that change your answer?
 12 A. No, it doesn't.
 13 Q. Other than from her to him?
 14 A. No. It doesn't change my answer.
 15 Q. Is it fair to say that since those are
 16 crimes, Officer Lopera, had Tashii Farmer survived,
 17 could have, in fact, charged Tashii Farmer with a
 18 crime?
 19 MR. LAGOMARSINO: Form.
 20 THE WITNESS: That would be up to him to
 21 articulate. And if he could do that, then yes.
 22 You named a lot of things, a lot of
 23 possible crimes, some of which are easier to
 24 articulate based on what I know of the case than
 25 others.

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* * * Videotaped Deposition * * *

22 (Pages 82 to 85)

Page 82

1 Certainly -- well, I'll just leave it at
 2 that.
 3 BY MR. MCNUTT:
 4 Q. In your role -- in your employment with
 5 Metro, have you reviewed Officer Lopera's CIRT
 6 statement?
 7 A. Yes.
 8 Q. And are you aware that Officer Lopera
 9 stated myriad times through the CIRT statement that
 10 his impression or belief was that Tashii Farmer was
 11 under the influence of a controlled substance?
 12 A. Yes.
 13 Q. So if that was his perspective, would that
 14 provide reasonable suspicion to detain Tashii Farmer?
 15 MR. LAGOMARSINO: Form.
 16 BY MR. MCNUTT:
 17 Q. You can answer.
 18 A. Yes.
 19 Q. And from that point on, are you aware at
 20 any point since the event to now that Tashii Farmer
 21 was, in fact, under the influence of illegal
 22 methamphetamines?
 23 MR. LAGOMARSINO: Form.
 24 THE WITNESS: Yes. It was in the
 25 autopsy.

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1 A. Yes. More likely he would arrest him for
 2 trespassing if he could get that on, and then wait on
 3 the blood later on.
 4 Q. We'll get to the trespass in a minute.
 5 A. Sorry.
 6 Q. Are you aware that in Ken Lopera's CIRT
 7 statement that he testified that he believed that
 8 Tashii Farmer was going to carjack a vehicle outside
 9 the Venetian?
 10 A. Yes.
 11 Q. And irrespective of 20/20 hindsight, is it
 12 reasonable to accept Ken Lopera's perception of those
 13 events happening very quickly to justify detaining
 14 Tashii Farmer at that point?
 15 MR. LAGOMARSINO: Objection. Form.
 16 THE WITNESS: Yes. For questioning under
 17 reasonable suspicion manner, yes.
 18 BY MR. MCNUTT:
 19 Q. What are examples of deescalation
 20 techniques?
 21 A. The first one would be getting more
 22 resources there. In other words, if you're by
 23 yourself, getting more officers there. Because
 24 someone would probably fight with you one on one
 25 versus you see two or three officers. So we found if

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1 BY MR. MCNUTT:
 2 Q. So, in fact, Ken Lopera's perception was
 3 correct, that Tashii Farmer was under the influence
 4 of a controlled substance, correct?
 5 A. Yes.
 6 Q. And that would have justified arresting
 7 Tashii Farmer and taking him to jail; isn't that
 8 true?
 9 A. As long as he could articulate it and get a
 10 search warrant for his blood for being under the
 11 influence of a controlled substance, yes.
 12 So it's not quite as simple as it used to
 13 be to arrest someone for being under the influence of
 14 a drug. When I was an officer, I could just arrest
 15 you and articulate it and that would be it.
 16 Now you have to get a blood draw, and then
 17 the DA won't call in the charges until the blood
 18 comes back.
 19 So yes, it's all possible. I'm not sure if
 20 he has the ability to do a telephonic search warrant.
 21 Not every officer does. It takes some training.
 22 Q. But it's true that Tashii Farmer could have
 23 been detained for that entire period of time in
 24 handcuffs at least awaiting that search warrant for
 25 his blood, correct?

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1 we get more officers there, that helps to deescalate.
 2 Talking is deescalation. Backing off from
 3 using force until you get more officers there is
 4 another form of deescalation. And deescalation could
 5 also be using tools so you don't have to use deadly
 6 force.
 7 Now, in this case there was no weapons
 8 involved in Tashii Farmer, but what generally we talk
 9 about with deescalation is using less lethal tools so
 10 we don't have to use lethal force. So the Taser, the
 11 bean bag, 40-millimeter cap stun. All those things
 12 are deescalation if you're trying to prevent the use
 13 of lethal force.
 14 Q. When an officer broadcasts a Code Red, does
 15 that indicate to other officers that they should
 16 respond to that, or is that merely a communications
 17 technique to open up the channel?
 18 A. Well, so there's no yes or no answer to
 19 that. It's both. It does shut the channel down so
 20 that everyone knows there's an emergency there. And
 21 automatically officers would go to that call.
 22 Q. Are you aware that Officer Lopera did, in
 23 fact, call for a Code Red over the radio?
 24 A. Yes. And a foot pursuit.
 25 Q. So that would constitute one mechanism of

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23 (Pages 86 to 89)

Page 86

1 deescalation technique, correct?
 2 A. Yes.
 3 Q. He's seeking to have other officers there,
 4 correct?
 5 A. He would have to answer that for me. But
 6 it's certainly a way to clear the channel and let
 7 people know that there was something going on where
 8 he needed help.
 9 Q. Do you recall Officer Lopera giving verbal
 10 commands to Tashii Farmer?
 11 A. Yes.
 12 Q. Do you recall at any point that Tashii
 13 Farmer complied with those verbal commands?
 14 A. I didn't see any, that he complied.
 15 Q. You said in a question, in response to a
 16 question from Mr. Lagomarsino, that the use of the
 17 LVNR or neck restraint, whatever the exact question
 18 was, he asked you if it was excessive in your opinion
 19 and you said yes.
 20 Do you recall that?
 21 A. Yes.
 22 Q. Why do you think it was excessive?
 23 A. So his question also included based on the
 24 length of time that the LVNR or whatever neck
 25 restraint was applied was on there, and that's what I

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1 A. You're right. And for how long it was
 2 applied.
 3 Q. And do you know what caused Tashii Farmer
 4 to go unconscious, i.e., whether it was from the neck
 5 restraint or whether it was from exhaustion or
 6 whether it was from the use of illegal narcotics?
 7 A. No. I don't know.
 8 Q. Is it possible that Tashii Farmer went
 9 unconscious because he was under the influence of
 10 illegal methamphetamine?
 11 MR. LAGOMARSINO: Form. Foundation.
 12 THE WITNESS: I would say I don't know
 13 that. I've never seen anyone go unconscious from
 14 using meth.
 15 BY MR. MCNUTT:
 16 Q. You said that the use of the Taser was
 17 excessive.
 18 A. Yes.
 19 Q. Is that because Officer Lopera used it more
 20 than three times?
 21 A. Yes. Outside of policy.
 22 Q. Right. And so Metro policy -- just correct
 23 me if I'm wrong. Metro policy is that an officer can
 24 use an ECD device up to three times, correct?
 25 A. That's correct.

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1 thought was excessive. On the video it appears like
 2 after he was unconscious, the LVNR or whatever
 3 restraint hold, was still on there too long.
 4 Q. Can you tell from the video how long Ken
 5 Lopera had pressure applied to Tashii Farmer's neck?
 6 A. No. You can't tell.
 7 Q. Can you tell from the video how long -- or
 8 excuse me, what angle or application the LVNR 1, 2,
 9 or 3 Ken Lopera was attempting to utilize?
 10 A. You can't tell because they're both moving
 11 around, and the camera angle doesn't show you that.
 12 Q. Is it fair to say that at various points
 13 when Ken's encircling arm is around Tashii Farmer's
 14 neck that no pressure was applied because you simply
 15 don't know, correct?
 16 A. You can't -- you're right. You can't tell
 17 how much pressure was applied throughout the time.
 18 Q. So do you think it would be accurate to say
 19 that a neck restraint or an LVNR or a rear-naked
 20 choke was applied to Tashii Farmer for the entirety
 21 of the time that his encircling arm was around Tashii
 22 Farmer?
 23 A. Definitely not.
 24 Q. Because you cannot tell whether any
 25 pressure was applied, correct?

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1 Q. And then at that point they should use some
 2 other control technique, correct?
 3 A. They should determine that the use of Taser
 4 is ineffective and switch to another.
 5 Q. Isn't it also true that Metro policy allows
 6 an officer to deviate from that policy if certain
 7 circumstances exist such as the officer is undersized
 8 compared to the suspect or the officer is alone?
 9 A. Deviate from the policy of?
 10 Q. That you cannot use the ECD more than three
 11 times?
 12 A. I would have to review the policy. I can't
 13 remember if it says that.
 14 Q. So you testified earlier that you know who
 15 Sergeant Bland is, and he's been identified --
 16 A. Yes.
 17 Q. -- in the estate case as a subject matter
 18 expert?
 19 A. Yes.
 20 Q. He testified to that fact. He testified
 21 that an officer alone could absolutely use an ECD
 22 device more than three times if that was the best
 23 opportunity, especially if the officer was undersized
 24 compared to the suspect.
 25 MR. LAGOMARSINO: Objection. Misstates.

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24 (Pages 90 to 93)

Page 90

1 BY MR. MCNUTT:

2 Q. Do you disagree with his opinion?

3 A. No. Here's what I would say. That
4 officer, every officer that uses force, has to
5 justify the force they use. So if they go outside of
6 policy, they have to explain that and that may or may
7 not be justified.8 Q. And so had Ken Lopera explained that to
9 you, you may have said something different, then
10 okay, that use of the ECD device was okay or within
11 policy?12 A. Well, I guess it's a little different in
13 this case because there was punches, there was Taser
14 and there was LVNR. So you can't just take one part
15 of that and say that's excessive or this is not
16 within policy or that.17 It's a use of force that in that incident
18 all is included together.19 So he would have to articulate I did this
20 and this wasn't effective, so I moved to this. And
21 then this wasn't effective, I went to that. And if
22 he did that correctly, even though some of the things
23 might be outside of policy, doesn't say how many
24 times you can strike someone. Because how many
25 strikes you did, you can't really tell. But we all

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1 this all being videotaped, it looks terrible.

2 And so that to me, I believe CIRT said it
3 was excessive. But, you know, to me I'm more
4 concerned with the Taser use and the LVNR than I am
5 with the strikes because I know some of the strikes
6 did not hit him.

7 BY MR. MCNUTT:

8 Q. Now, let's go back to the chain of command.
9 The CIRT, the Critical Incident Review Team, do they
10 report to you?

11 A. No.

12 Q. Who do they report to?

13 A. The captain of IOCP, which at the time was
14 Kevin McMahill.15 Q. Now, you sat on Officer Lopera's use of
16 force board, correct?

17 A. Yes.

18 Q. Let's go back to the ECD for a minute with
19 respect to it can be used three times and then the
20 officer should look to some other use of force.21 If you pull the ECD trigger a fourth time,
22 but it has no connection and does not complete the
23 circuit, so, therefore, transfers no energy to the
24 suspect, is that a violation of policy because you
25 pulled the trigger on the ECD but it didn't transfer

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1 know if you -- if he was to connect with all those
2 punches to Tashii Farmer's head that would have been
3 excessive.4 But we didn't say that was excessive
5 because we couldn't tell how many punches actually
6 hit him and what kind of damage or reaction it had to
7 change Tashii Farmer's behavior. His behavior didn't
8 change.9 Q. So on the strikes, Metro has no opinion as
10 to whether those were excessive because of that fact
11 that you don't know how many connected?

12 A. Well --

13 MR. LAGOMARSINO: Objection. Hold on.
14 Sorry.15 Objection to the extent you're asking for
16 Metro's opinion. It's not a 30(b)(6) witness.

17 You can answer.

18 THE WITNESS: And I guess my opinion, not
19 Metro's opinion, which I'm a little bit -- I mean, I
20 know I'm here to testify for that, but I believe that
21 when someone is on the ground, we shouldn't be
22 striking them at all. That's my opinion because
23 you -- it looks worse than it's effective.24 So my problem is more with effectiveness
25 than excessive use of force. And especially with

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1 any energy?

2 A. So here's what I would say. Yes, it's a
3 violation of policy, but that doesn't mean that
4 person did something wrong.5 So in other words, if you do it more than
6 three times, a supervisor has to investigate why did
7 you do it more, and was it -- was it actually
8 attached, was it effective. And so that's part of
9 the investigation the supervisor would do.10 Q. Are you aware of whether or not all of the
11 cyclings of the ECD in this case were -- had complete
12 circuit closure such that the device could transfer
13 energy to Tashii Farmer?

14 A. I am not aware of that. I just don't know.

15 Q. Okay. If Sergeant Bland is designated as a
16 subject matter expert on defensive tactics, neck
17 restraint and things of that nature in this case,
18 would you defer to his opinion regarding some of
19 these questions that I asked you on those topics?

20 MR. LAGOMARSINO: Objection. Form.

21 THE WITNESS: Yes.

22 BY MR. MCNUTT:

23 Q. You said earlier that you didn't have an
24 opportunity to get this info from Officer Lopera.

25 Do you recall that, generally?

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* * * Videotaped Deposition * * *

25 (Pages 94 to 97)

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1 A. Yes.
 2 Q. When Mr. Lagomarsino was questioning you
 3 about the use of force board, you said it wasn't much
 4 of a board because Officer Lopera did not show up and
 5 testify.
 6 A. Right.
 7 Q. As per his right, correct?
 8 A. Well, not per department policy. But
 9 that's his -- I guess his right.
 10 Q. It's his option?
 11 A. Yes.
 12 Q. There's consequences to that option?
 13 A. Yes.
 14 Q. But you have, in fact, received some of
 15 this information about Officer Lopera's perceptions
 16 and beliefs and actions and the justification for his
 17 conduct because you've read his CIRT report, correct?
 18 A. Yes. You're right.
 19 Q. Okay. So does that inform you that -- did
 20 you find his CIRT report to be unavailing, or did you
 21 want to hear it from him personally as -- what's the
 22 disjunct there?
 23 A. Yes. You're right. And that's what I was
 24 trying to get at. And I did read his statement and
 25 read the CIRT report. But that did still lead me to

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1 THE WITNESS: Well, the statement is to
 2 find out from the officer why he used force and for
 3 him to justify it. And part of that is to determine
 4 what kind of follow-up we as an agency need to do.
 5 Now, in the majority of cases, officers
 6 need some sort of training to fix any deficiencies we
 7 find or any issues in his statements that don't match
 8 what he should be saying per policy.
 9 In other words, people who make mistakes
 10 don't understand our use of force policy. People
 11 that understand our use of force policy make the
 12 better decisions and we very rarely see them making
 13 bad decisions.
 14 So I would say that based on the decisions
 15 Officer Lopera made, it would be very difficult for
 16 him to convince me that he was justified in his
 17 actions.
 18 BY MR. MCNUTT:
 19 Q. So you testified earlier that you believe
 20 most officers encountering Tashii Farmer, watching
 21 him flee into what I'll call the back of the house or
 22 an employee area only of the casino, would pursue
 23 Tashii Farmer, correct?
 24 A. Yes.
 25 Q. And do you think that officers have at that

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1 questions I wanted to ask the use of force board.
 2 Like I could do to Sergeant Crumrine whose answers
 3 were probably the reasons why he was recommended for
 4 a non-confirmation.
 5 So in that board, the answers you give and
 6 your attitude and the way you answer the questions
 7 does have a play in your credibility.
 8 Q. So if Officer Lopera had testified at the
 9 use of force board, is there a chance in your mind
 10 that you would have found his actions to be
 11 justified?
 12 A. Is there a chance?
 13 Q. Yes.
 14 A. I don't think so.
 15 Q. Why?
 16 A. Because I thought the CIRT report and his
 17 answers, he didn't justify his actions.
 18 Q. Is that the purpose of a CIRT report?
 19 A. CIRT report, you mean --
 20 MR. LAGOMARSINO: Sorry, let me interrupt
 21 you, sir.
 22 When you say a CIRT report, there's a
 23 report issued by Metro and the statement. So I just
 24 want to make sure the record is clear.
 25 MR. MCNUTT: The statement.

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1 point probable cause to detain that suspect?
 2 A. So reasonable suspicion?
 3 Q. Yes. I'm sorry.
 4 A. Yes.
 5 Q. Okay. Now, at what point did Ken Lopera
 6 know Tashii Farmer had no weapons on him?
 7 A. I don't know because I don't think he ever
 8 got to the point where he patted him down. So I
 9 don't think he ever knew for sure until after he was
 10 handcuffed and someone else probably checked him for
 11 weapons, I believe.
 12 Q. Right. So inside the casino, we know from
 13 Ken Lopera's CIRT transcript that he believed that
 14 Tashii Farmer was under the influence of a controlled
 15 substance, correct?
 16 A. I think he said or mentally ill.
 17 Q. Actually, so he actually said that he was
 18 under the influence of a controlled substance on
 19 seven occasions. And he mentioned mentally ill on
 20 one occasion.
 21 MR. LAGOMARSINO: Objection. Form.
 22 THE WITNESS: Okay. I --
 23 MR. LAGOMARSINO: Misstates.
 24 THE WITNESS: I remember something about
 25 mentally ill.

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26 (Pages 98 to 101)

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BY MR. MCNUTT:

Q. And so we have -- from his perception, we have Tashii Farmer, he believes he's under the influence of a controlled substance and he's now fled into a restricted area of the casino, correct?

A. Yes.

Q. He pursues and you don't have any problem with the pursuit, correct?

A. No.

Q. And if he would have caught up to him at that point and Tashii Farmer would have complied, would you have had any problem with Ken Lopera putting him in handcuffs?

A. He would have to articulate why he's putting him in handcuffs, but it's certainly enough to stop him -- yes. I would prefer that he stopped him and tried to pat him down and talked to him. Now, if he runs like that, generally we put them in handcuffs right away.

Q. Once they get outside, do you recall hearing on the video Ken Lopera giving verbal commands to -- asking Tashii Farmer to stop?

A. Yes.

Q. And is that a lawful command?

A. Yes.

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Q. And did Tashii Farmer comply with that?

A. No.

Q. And Ken Lopera articulated in his CIRT statement that he believed that Tashii Farmer was going to carjack a white Toyota pickup truck outside the Venetian.

Do you recall that?

A. Yes.

Q. At that point, that's not a misdemeanor, correct? Carjacking an occupied vehicle is a felony, correct?

A. Yes.

Q. Is Ken Lopera justified in using a Taser at that point?

A. Well, his -- so you're putting me in the position to justify his actions, which when I watch the video, I don't see an attempted carjacking. Now, he sees it differently than me. He was there, I wasn't there.

So and I didn't feel like his answers in the CIRT interview articulated a carjacking either.

Now, I don't know -- I now have hindsight to know that the victim didn't feel like he was going to be carjacked. So that -- it kind of undermines what, you know, what Lopera said.

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Q. If the victim didn't feel like he was going to be carjacked, why did he say he locked his car doors out of fear?

MR. LAGOMARSINO: Objection. Form. Calls for speculation.

THE WITNESS: I don't know.

BY MR. MCNUTT:

Q. That's a quote. And that was a quote given to Metro. He told Metro in a recorded interview later on, once they tracked down the license plate and found him, he said that he locked his doors, quote, out of fear, I guess.

Does that corroborate Ken Lopera's perception of what was going on, or does that undercut it?

MR. LAGOMARSINO: Form. Misstates. Argumentative. Calls for hearsay.

THE WITNESS: So to me all it means is he was scared of Tashii Farmer. It doesn't articulate that Tashii Farmer was going to steal his vehicle.

So I understand what you're saying that the guy was scared of him, and I think Tashii Farmer running and acting the way he was probably was scary.

But that doesn't -- to me, I'm looking for probable cause to say carjacking. I'm looking for

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him taking him, moving him out of the way, going into the car, taking his keys, using a weapon, threatening him. Those are the carjacking cases I'm familiar with.

BY MR. MCNUTT:

Q. So -- I'm sorry, go ahead.

A. So I understand what he said. But I don't see it when I look at the video. I wasn't there. I just don't see it.

Q. You would agree with me these events happened pretty quick, correct?

A. Yes.

Q. And is it your opinion that Ken Lopera should have waited until Tashii Farmer committed some further act against the occupant of the vehicle before he took action?

MR. LAGOMARSINO: Objection. Form. Vague.

BY MR. MCNUTT:

Q. Meaning at what point should Ken Lopera have used that ounce of prevention versus the pound of cure?

MR. LAGOMARSINO: Objection. Form.

THE WITNESS: It's hard for me to go back and say what he should have done.

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27 (Pages 102 to 105)

Page 102

1 BY MR. MCNUTT:

2 Q. But it's subjective, isn't it?

3 A. Yes. I guess that's what I'm trying to
4 say, subjective.5 Q. So two reasonable officers could come to a
6 different conclusion about how to act in that
7 circumstance?

8 MR. LAGOMARSINO: Objection. Form.

9 THE WITNESS: I guess two reasonable
10 officers could disagree on what Tashii Farmer was
11 doing.

12 BY MR. MCNUTT:

13 Q. And based on that disagreement, of course,
14 taking different actions towards Tashii Farmer,
15 correct?

16 MR. LAGOMARSINO: Objection. Form.

17 THE WITNESS: Yes, I mean, like I said, we
18 rely on officers to justify their use of force. And
19 if it's not justified, then it's wrong.

20 BY MR. MCNUTT:

21 Q. In this case it wasn't justified because
22 Ken Lopera did not testify at the use of force board?

23 MR. LAGOMARSINO: Objection. Form.

24 THE WITNESS: That's only part of it. He
25 did give a CIRT statement, and he did say that he

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1 site is tactics decision-making. And so sometimes in
2 that disposition, there is some bleed-over.3 In other words, did the tactics employed,
4 because they were so bad, cause the use of force?5 Now, in this case, this wasn't -- that
6 wasn't an option so we didn't have to consider that.7 But there was no one else we were looking
8 at during the use of force board other than Lopera.
9 Because he's the one that used force. The other
10 officers and all the other statements are using the
11 tactical review board side.12 So although it's one case, they are
13 separate.14 Q. Okay. Now, at the time of this event, May
15 of 2017, the LVNR was authorized to be used in a low
16 level of force situation, correct?

17 A. Yes.

18 Q. So the LVNR was a tool that Ken Lopera
19 could have used in this circumstance, correct?

20 A. Yes.

21 Q. And shortly thereafter, there was a policy
22 change to where it was only allowed to be used in
23 intermediate levels or higher, correct?

24 A. You're correct.

25 Q. And Mr. Lagomarsino got into that a little

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1 thought the subject was trying to carjack whatever
2 his name was.

3 BY MR. MCNUTT:

4 Q. Did the use --

5 A. When we looked at it, we just didn't see
6 that part, and I didn't see it when I watched the
7 video or read it.8 Q. Okay. Did the use of force board consider
9 the CIRT statement?

10 A. Yes.

11 Q. Why?

12 A. Well, we consider the whole case.

13 Q. Okay. So the CIRT statement --

14 A. You couldn't do the case against everyone
15 else without considering Lopera's statement and what
16 he did.17 Q. Okay. And the reason I ask -- it's not a
18 trick question. I think I didn't understand
19 something.20 I thought the CIRT statement stayed purely
21 on the policy side, and it seems the use of force
22 board is -- I guess maybe it's more on the policy
23 side, but it is also on the policy side?24 A. Right. So you're getting into a little
25 area that one of the dispositions on the use of force

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1 bit earlier. In a nutshell, why was that?

2 A. In a nutshell, we didn't want officers to
3 go to LVNR and low level usage. And then secondly,
4 we wanted to simplify the policy to ensure that
5 everyone understood when they could and couldn't use
6 the LVNR.7 Q. And when you say simplify the policy,
8 exactly what has been simplified?9 A. Well, when you have a technique that can be
10 used over low level, intermediate and deadly force,
11 then it was too broad for that technique.12 Q. So give me an example of low level versus
13 intermediate force.14 A. Low level is verbal resistance. Not
15 following commands.16 Q. So previously, prior to 2017, you could use
17 LVNR for things like -- for misdemeanors, correct?

18 A. Yes.

19 Q. Such as selling water?

20 A. Yes.

21 Q. And just recently in the example that you
22 testified about a little bit earlier where the
23 officer was showing -- was employing -- we'll mark
24 that exhibit...

25 (Exhibit A was marked for

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28 (Pages 106 to 109)

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1 identification.)
 2 BY MR. MCNUTT:
 3 Q. Take a minute and look at that article.
 4 Have you seen that screenshot before?
 5 A. Have I seen it before?
 6 Q. Today.
 7 A. Monday? Yes.
 8 Q. And so this is an article -- we printed
 9 this off yesterday from the Las Vegas Review-Journal.
 10 And what's interesting to me is that Metro, in their
 11 statement, the LVMPD PIO -- do you see at the bottom
 12 of the first page? What is PIO?
 13 A. Public information officer.
 14 Q. "The LVMPD PIO has received a number of
 15 requests reference a video circulating on social
 16 media of a water seller being taken into custody,
 17 said a statement released Monday by Metro."
 18 And then quote, "The video is from an
 19 incident in July 2013 which was fully investigated by
 20 LVMPD Internal Affairs. The investigation showed no
 21 policy violations occurred. In addition, a lawsuit
 22 filed by the individual in the video was dismissed by
 23 the courts."
 24 And that comports with your testimony
 25 earlier, correct?

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1 or may not be excessive but certainly all of the
 2 techniques used to me were combined to make it
 3 excessive use of force.
 4 Q. So if Tashii Farmer had, as Ken Lopera
 5 hoped for, proned out -- that's what he said in his
 6 CIRT statement -- that after he achieved
 7 neuromuscular incapacitation with the first Taser
 8 strike, he expected Tashii Farmer to prone out and he
 9 was going to wait for his captain to show up is what
 10 he said.
 11 Do you recall that?
 12 A. I don't remember the part about the
 13 captain. But I do remember saying he was hoping the
 14 Taser would work and he would be proned out and that
 15 would be the end of it.
 16 Q. Had that occurred, had Tashii Farmer
 17 complied with his commands to not move after he had
 18 been tased, what would have happened at that point,
 19 do you have any idea?
 20 A. No. I mean, Officer Lopera would have
 21 completed an arrest report, use of force
 22 documentation. That would have been reviewed by a
 23 supervisor. And I assume if that's all that
 24 happened, that that would be fine.
 25 Q. And Officer Lopera would not have been

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1 A. Good.
 2 Q. And then Metro says, in the statement,
 3 quote, "Please note per Clark County code 6.04.130 it
 4 is illegal to sell any merchandise, goods, items,
 5 wares or services on any portion of public
 6 right-of-way."
 7 A. Right.
 8 Q. Did you read that or do you just take my
 9 word for it that I read it accurately?
 10 A. I read it quickly.
 11 Q. So per Metro policy, it's okay to employ
 12 the LVNR, lateral vascular neck restraint, on
 13 somebody allegedly committing the misdemeanor crime
 14 of selling water in the desert, and but yet Metro on
 15 the other hand has held that someone that is believed
 16 to be under the influence of a controlled substance
 17 and, in fact, was under the influence of a controlled
 18 substance, fled irrationally into an employee area
 19 only, and was believed to be carjacking someone, that
 20 that use of force with the LVNR was excessive?
 21 MR. LAGOMARSINO: Objection. Form.
 22 BY MR. MCNUTT:
 23 Q. Is that the position?
 24 A. The position I've had and I've tried to
 25 make it clear is the individual techniques used may

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1 penalized in any way by Metro?
 2 A. Right.
 3 Q. But Tashii Farmer didn't comply and didn't
 4 stay prone on the ground, correct?
 5 MR. LAGOMARSINO: Form.
 6 THE WITNESS: Correct.
 7 BY MR. MCNUTT:
 8 Q. And so additional uses of force were
 9 warranted, correct?
 10 A. Yes.
 11 Q. Because when a suspect doesn't comply with
 12 lawful commands and some force has already been used,
 13 additional force is warranted, correct?
 14 MR. LAGOMARSINO: Form.
 15 THE WITNESS: Yes. And different
 16 techniques.
 17 BY MR. MCNUTT:
 18 Q. And different techniques.
 19 Officer Lif said after one or two Taser
 20 strikes, she would have went hands on with Tashii
 21 Farmer. Is that a reasonable alternative?
 22 A. Yes.
 23 Q. She also said she would have used her baton
 24 on Tashii Farmer. Is that a reasonable alternative?
 25 A. Yeah. That's another tool.

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30 (Pages 114 to 117)

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1 seconds to comply, is that long enough to determine
2 whether or not they're going to comply?
3 A. I think that's actually longer than I would
4 wait before I would start giving more or different
5 verbal commands. You're just giving commands until
6 it's clear that -- in other words, until that person
7 stood up, if they're just going from laying to
8 sitting up, I'm not as concerned if they go from
9 laying to sitting up because someone sitting up is
10 not a danger to me.
11 Q. Of course it depends how quickly they're
12 doing it because you don't know how quickly --
13 A. You're right.
14 Q. -- the movement between --
15 A. Yes. It can happen quickly, but I'm just
16 trying to go with your scenario. And, you know,
17 there's no set time or, you know, number of seconds.
18 Every situation is different.
19 Q. Let's look at page 7 of 8 or P002374,
20 whichever one you prefer to look at.
21 And I'm going to start with the second
22 paragraph from the bottom that starts: "After
23 cycling the ECD seven times."
24 Do you see that, sir?
25 A. Yes.

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1 between cycles of the ECD was six seconds. Officer
2 Lopera told Farmer to get on his stomach but never
3 gave Farmer a reasonable opportunity to comply with
4 commands."
5 Do you see that?
6 A. Yes.
7 Q. Now, do you agree with that statement that
8 six seconds is not enough time for Tashii Farmer to
9 comply?
10 A. Well, like I said before, every situation
11 is different. And he was not complying. However, he
12 was not actively resisting or aggressively resisting.
13 I guess is my point.
14 And people who are either drunk or under
15 the influence of narcotics do not immediately comply,
16 rarely do they comply at all.
17 Q. Okay. But that's a little -- I appreciate
18 that answer. But that's a little different than my
19 question.
20 A. Okay. Sorry.
21 Q. You've testified a couple of times now that
22 five or six seconds, in one answer, you said would be
23 longer than you would give somebody to comply. And
24 I'm simply asking you whether you agree with this
25 statement that Lopera giving Farmer six seconds was

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1 Q. So it says: "Officer Lopera holstered his
2 ECD with Farmer lying on his stomach. Officer Lopera
3 straddled Farmer's back and struck him approximately
4 10 to 12 times in the head while giving Farmer verbal
5 commands."
6 Do you see that?
7 A. Yes.
8 Q. So it says that Lopera struck Farmer 10 to
9 12 times in the head, correct?
10 A. Yes.
11 Q. And you testified today that it's unclear
12 whether any -- how many of the punches connected with
13 Tashii Farmer, correct?
14 A. Yes.
15 Q. So do you think that should be worded a
16 little more carefully to make clear to the reader
17 that's unclear how many punches struck Tashii Farmer?
18 A. Yes.
19 Q. So if you go to the fourth paragraph up,
20 that starts: "Officer Lopera began issuing verbal
21 commands."
22 Do you see that?
23 A. Yes.
24 Q. "Officer Lopera began issuing verbal
25 commands to Farmer. However, the longest time

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1 not a, quote, "Reasonable opportunity to comply with
2 commands."
3 Do you agree with that statement?
4 MR. LAGOMARSINO: Objection. Asked and
5 answered.
6 THE WITNESS: So there's no way to answer
7 that without watching the video.
8 BY MR. MCNUTT:
9 Q. We're going to.
10 A. Because giving someone -- I never timed --
11 I just watched the video. I didn't count the number
12 of seconds in between. And when you watch the video,
13 and he -- you have to give clear direction of what
14 you want. And it appeared like -- and I'm going off
15 some memory here, but there was some conflicting
16 directions given while you're tasing someone, and
17 which led to the confusion of him not complying.
18 So it's really hard to justify now.
19 Q. Do you know who wrote this arrest report?
20 A. Yeah. I'm sure it was either Alsup -- I
21 think it was Alsup.
22 Q. It was Detective Alsup. He testified that
23 he wrote every word of it.
24 A. Yeah.
25 Q. And even though Mr. Colon, or I think it's

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31 (Pages 118 to 121)

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1 Mark Colon is on here, he testified that Alsup --
 2 A. He's a lead detective.
 3 Q. Right. And you said he's a good detective
 4 and does good work, correct?
 5 A. Yes.
 6 Q. Now, do you think that this at a minimum
 7 should have been reworded to be a little more
 8 accurate that six seconds could, in fact, be enough
 9 time to gain compliance or shouldn't be enough time
 10 to gain compliance?
 11 MR. LAGOMARSINO: Objection. Form.
 12 THE WITNESS: Yes.
 13 BY MR. MCNUTT:
 14 Q. So it could have been written a little
 15 better, correct?
 16 A. Yes.
 17 Q. Because in your opinion, six seconds,
 18 situation dependent, is more than enough time for
 19 compliance, correct?
 20 MR. LAGOMARSINO: Misstates.
 21 BY MR. MCNUTT:
 22 Q. Yes or no?
 23 A. Yes.
 24 Q. So let's go to the fifth paragraph up. And
 25 this is where we're getting into the carjacking. And

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1 A. Yes.
 2 Q. Should that other quote from Jonathan
 3 Pierce have been included in this arrest report?
 4 A. Yes.
 5 Q. Why was it not?
 6 A. I don't know.
 7 Q. So knowing now, if you were the supervisor
 8 of Detective Alsup and we're sitting here going
 9 through this, would you kick this arrest report back
 10 to him and make him correct those three errors we've
 11 gone over?
 12 MR. LAGOMARSINO: Objection to the extent
 13 he caught the errors.
 14 THE WITNESS: If I knew about the errors,
 15 then they would be sent back for correction.
 16 BY MR. MCNUTT:
 17 Q. Of course.
 18 A. Normally that would be the sergeant's job
 19 or the lieutenant's job before it got to anywhere
 20 else.
 21 So yes, that's a review that supervisors
 22 should be doing of these reports.
 23 Q. And either that didn't happen or it was
 24 missed, correct?
 25 A. Yes.

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1 the middle of the paragraph there's a statement that
 2 says -- or a sentence that says: "The driver of the
 3 white truck stated he did not believe Farmer was a
 4 threat."
 5 Do you see that?
 6 A. Yes.
 7 Q. Now, the driver in the same interview, the
 8 driver of the white truck, Jonathan Pierce, told
 9 Metro officers, members of the FIT team, that he
 10 locked his doors out of fear of Tashii Farmer.
 11 MR. LAGOMARSINO: Objection. Misstates.
 12 BY MR. MCNUTT:
 13 Q. We talked about that earlier, correct?
 14 A. Yes.
 15 Q. I mean, is that not probative information
 16 regarding what was going on at that moment?
 17 A. Yes.
 18 Q. Okay. And so the reader of this report
 19 could get two different opinions about what was going
 20 on if they only read that the driver of the white
 21 truck stated he did not believe Farmer was a threat,
 22 period. Versus the driver of the white truck stated
 23 he did not believe Farmer was a threat, comma, but he
 24 locked his doors out of fear.
 25 Two different interpretations, correct?

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1 Q. It starts with Detective Alsup inasmuch as
 2 he missed getting this completely accurate, correct?
 3 MR. LAGOMARSINO: Objection. Form.
 4 THE WITNESS: Yes.
 5 BY MR. MCNUTT:
 6 Q. Because he testified that he had access to
 7 all of his team's information, which included
 8 Jonathan Pierce's statement about locking his doors
 9 out of fear.
 10 Now, Mr. Lagomarsino asked you earlier a
 11 few questions about body-worn camera policy. And if
 12 I recall your testimony correctly, you said that the
 13 officers involved in the use of force needed to have
 14 their -- per policy had to have their cameras
 15 running. They couldn't turn them off until the use
 16 of force was over; is that accurate?
 17 A. Yes.
 18 Q. And so in this case, would an acceptable
 19 time to turn the cameras off been when Tashii Farmer
 20 was in handcuffs, or is it before that or is it after
 21 that?
 22 A. Usually when the subject is placed in
 23 handcuffs is what we would consider the end of that
 24 use of force incident.
 25 Q. Okay. And obviously we have plenty of

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33 (Pages 126 to 129)

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1 A. No.
 2 Q. -- the exhibit we looked at earlier where
 3 it's a direct front-on, correct?
 4 A. Right.
 5 Q. So Ken Lopera in his CIRT statement said:
 6 "While I had the LVNR applied, I was attempting to,
 7 due to the fact that he was on his side, his
 8 movement, I had full encirclement but I wasn't able
 9 to get the full grip. I was still trying to embrace
 10 that neck brace principle."
 11 Do you know what the neck brace principle
 12 is?
 13 A. That's you're head to head.
 14 Q. It's where you're controlling the suspect's
 15 neck to protect their airway?
 16 A. Okay.
 17 Q. I mean, that's a phrase out of Metro's
 18 training: "While applying pressure to his carotid
 19 artery."
 20 Sounds like an LVNR, correct?
 21 A. Yes.
 22 Q. "Due to the way my body was positioned to
 23 my right side," and then another sentence, "I did not
 24 have that luxury due to him already being on my
 25 back."

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1 test, but do you know the different levels of
 2 resistance that Metro teaches that suspects undergo
 3 or utilize? We have compliant.
 4 A. Compliant.
 5 Q. Passive resistance.
 6 A. Passive and active resistant, aggressive --
 7 Q. Resistance, and aggravated aggressive
 8 resistance.
 9 A. Yeah.
 10 Q. Do you have an opinion as to -- and if you
 11 don't, that's fine -- what Tashii Farmer was
 12 demonstrating in this incident?
 13 A. I thought it was active resistance. It
 14 looked to me like he didn't want to be handcuffed.
 15 Q. And I'll read active resistance, and this
 16 is from LVMPD 0007: "The subject's verbal or
 17 physical actions are intended to prevent an officer
 18 from placing the suspect in custody and taking
 19 control, but are not directed at harming the officer.
 20 Examples, walking or running away, breaking the
 21 officer's grip."
 22 Does that comport with your memory?
 23 A. Yes.
 24 Q. And then aggressive resistance so we know
 25 what the distinction is: "The subject displays the

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1 So he articulates that he couldn't apply
 2 the LVNR properly. And yet Detective Alsop found
 3 that he absolutely did not use an LVNR.
 4 Do you think that's accurate?
 5 A. Well, Detective Alsop didn't have his
 6 statement.
 7 Q. But do you think -- that's a fair point.
 8 And because we've used -- talked about the statement
 9 on both sides, and I'm glad to hear you say that
 10 actually. It affirms somewhat my belief in the
 11 system.
 12 So do you think anybody watching the video
 13 could definitively tell that Ken Lopera was not
 14 applying the LVNR accurately or was intentionally
 15 using a non-approved technique?
 16 A. You couldn't tell and our experts couldn't
 17 tell either.
 18 Q. So do you think it's fair for
 19 Detective Alsop to come to that definitive
 20 conclusion?
 21 A. I think it's a little too definitive. But
 22 it's not wrong 100 percent. I don't know how to --
 23 he could have worded it better.
 24 Q. You talked about levels of resistance just
 25 in passing in one of your answers. This is not a

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1 intent to harm the officer, themselves or another
 2 person" -- let me know if I'm going too fast -- "and
 3 prevent an officer from placing the subject in
 4 custody and taking control. The aggression may
 5 manifest itself through a subject taking a fighting
 6 stance, punching, kicking, striking, attacks with
 7 weapons or other actions which present an imminent
 8 threat of physical harm to the officer or another."
 9 Comport with your --
 10 A. Yes.
 11 Q. And then obviously aggravated aggressive is
 12 actions significant resulting in death or serious
 13 bodily harm.
 14 If I reach for your sidearm or if you're
 15 carrying one on the other side, your Taser, is
 16 that -- what level of resistance is that?
 17 A. That's aggravated -- not aggravated.
 18 Q. Is it aggressive resistance?
 19 A. Aggressive resistance, I'm sorry.
 20 Q. So your choices are active or aggressive
 21 resistance?
 22 A. Yes.
 23 Q. Yes? I said your choices are active
 24 resistance or aggressive resistance.
 25 A. It depends how you articulated that I

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* * * Videotaped Deposition * * *

37 (Pages 142 to 145)

Page 142

1 Q. So, in fact, Ken Lopera did give Tashii
2 Farmer enough time to comply with his lawful command,
3 correct?

4 A. Well, you have to watch the whole video.

5 Q. We're going to. But just this part.

6 A. I'm saying when you stop it like that and
7 do each time it's different than -- like, even one of
8 the commands was to the guy in the truck.

9 Q. So should Detective Alsup not have done
10 that in the arrest report?

11 A. Yes, I already --

12 Q. Because that's what he did in the arrest
13 report.

14 A. I already agreed that he should have worded
15 it better in the arrest report.

16 Q. I didn't even ask you those questions.
17 That's exactly what Alsup did. Alsup broke this down
18 just like I'm breaking it down. So should he not
19 have done that?

20 MR. LAGOMARSINO: Objection. Form.

21 THE WITNESS: Everybody that looks at video
22 looks at the whole thing, and then they break it down
23 by seconds.

24 BY MR. MCNUTT:

25 Q. That's what we're going to do here.

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1 enough.

2 Q. True. And so after, you know, running for
3 60 seconds, chasing the suspect, Ken Lopera did not
4 say everything perfectly like we would have liked him
5 to, correct?

6 A. Right.

7 Q. Is that a violation of policy?

8 A. Not a violation. And not unusual.

9 Q. It's just a mistake?

10 A. Yes.

11 (Playing Video)

12 BY MR. MCNUTT:

13 Q. So we're now at 1:52 after the second ECD
14 strike. Ken Lopera said don't move, correct?

15 A. Yes.

16 Q. And Tashii Farmer then drew his knees up to
17 his waist, correct?

18 A. Yes.

19 Q. Is that not moving?

20 A. That's moving.

21 Q. Is that complying with his lawful
22 command?

23 A. Yes. I mean, no, it's not complying.

24 Sorry.

25 (Playing Video)

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1 From this 1:40 to 1:44, Ken Lopera gave a
2 lawful command, and Tashii Farmer did not comply with
3 it, correct?

4 A. Yes.

5 Q. And in your opinion, was that four seconds
6 reasonable for Ken Lopera to have given?

7 A. Yes.

8 Q. Okay. Thank you.

9 (Playing Video)

10 BY MR. MCNUTT:

11 Q. So because there was no compliance, Ken
12 Lopera gave him another cycle of the ECD, correct?

13 A. Yes.

14 Q. And Tashii Farmer goes to his back,
15 correct?

16 A. Yes.

17 Q. Was that use of the Taser authorized per
18 Metro policy?

19 A. Yes. But he also said, "Get on your
20 stomach," at the same time he tased him. Which is
21 not possible to do.

22 Q. Okay. Sure. And sometimes --

23 A. Earlier that's what I said. Some of the
24 commands were conflicting. And so you can't say,
25 okay, he told him not to move five times and that's

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1 BY MR. MCNUTT:

2 Q. So he then -- so we're now at 1:56. Ken
3 Lopera says, "Get on your stomach," correct? And
4 cycled the ECD?

5 A. Yes.

6 Q. Now, do you have a problem with that?

7 A. I would have preferred the time between the
8 commands and the cycling to be longer apart.

9 Q. In this instance?

10 A. Yes, in this instance.

11 Q. Okay.

12 A. So that's what you're asking me, I thought.

13 Q. Yes.

14 A. Yes. I would prefer that there's some time
15 between the commands and the Taser cycling.

16 Q. So it is appropriate to break this down,
17 because in the first three commands, we saw that Ken
18 Lopera did give a reasonable time for compliance and
19 Tashii Farmer did not comply, but you're saying in
20 this one instance that he did not?

21 MR. LAGOMARSINO: Objection. Misstates.

22 BY MR. MCNUTT:

23 Q. Is that fair?

24 A. Yes.

25 (Playing video)

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39 (Pages 150 to 153)

Page 150

1 A. No. There's other options.
 2 Q. Such as?
 3 A. Cap stun, baton. None of these are going
 4 to look good, but there's other options.
 5 Q. But, now, cap stun is not an option now, is
 6 it? Because you cannot per policy use cap stun and
 7 ECD on the same suspect, can you?
 8 A. Well, you shouldn't.
 9 Q. Well, are we going to say that you are
 10 going to recommend to this officer that he should?
 11 A. Well, I can't stop looking at his hand on
 12 his wrist where he has his Taser in his other hand --
 13 Q. Okay.
 14 A. So that's not how we teach people.
 15 Q. Okay. So if Ken did this and it wasn't
 16 perfect, but it wasn't out of policy, would you have
 17 preferred he did this or would you have preferred he
 18 pull out his baton and start baton strikes?
 19 A. But the mistakes that Officer Lopera made
 20 earlier led to this. Now, by that I mean he didn't
 21 let his partner know where he was going. He didn't
 22 get on the radio until he was already on the ground
 23 and already had tased him and asked for a Code Red.
 24 So what I would prefer to see him do would
 25 be to call out he was in a foot pursuit on the radio

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1 because to even see any interaction you have to see
 2 the Venetian video with the truck and Tashii Farmer
 3 and the driver.
 4 So this catches up while he's already
 5 backed away from the truck, Tashii Farmer. Correct?
 6 BY MR. MCNUTT:
 7 Q. I think -- we're a slightly different
 8 interpretation, but I don't want to argue that
 9 point.
 10 A. But my issue is the use of the Taser. His
 11 justification is an attempted carjacking, and I don't
 12 see that.
 13 Q. Okay.
 14 A. So after that, if that is justified, based
 15 on there is an attempted carjacking, then I have no
 16 problems right now.
 17 Q. And Ken Lopera did see that. Can you give
 18 the benefit of the doubt to your officer?
 19 MR. LAGOMARSINO: Form.
 20 THE WITNESS: That's not what we do.
 21 BY MR. MCNUTT:
 22 Q. Okay. That's unfortunate.
 23 MR. LAGOMARSINO: Move to strike.
 24 (Playing video.)
 25

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1 and ask for a Code Red. I don't know how much time
 2 it took for him to catch up to him, but that could be
 3 the 30 seconds we're looking for to get another
 4 officer there.
 5 So each mistake could be small, but when it
 6 adds up it could be this is a better way to do this?
 7 Is he outside of policy? No.
 8 Q. These are the types of things that you hot
 9 wash after the fact to make your officers better,
 10 correct?
 11 A. Yes. Exactly.
 12 MR. LAGOMARSINO: Form.
 13 BY MR. MCNUTT:
 14 Q. But it doesn't mean they're liable for the
 15 mistake, correct?
 16 MR. LAGOMARSINO: Form.
 17 THE WITNESS: Well, we don't determine
 18 liability.
 19 BY MR. MCNUTT:
 20 Q. But in this case, he's not -- up to this
 21 point, 2:05, he's not even out of policy, correct?
 22 MR. LAGOMARSINO: Form.
 23 THE WITNESS: I haven't seen anything right
 24 there. He says that there was an attempted
 25 carjacking. The video certainly doesn't show that

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1 BY MR. MCNUTT:
 2 Q. Do you hear that, "Okay. Okay, sir"?
 3 A. Yes.
 4 Q. Okay. Does that sound like Ken Lopera or
 5 Tashii Farmer?
 6 A. I can't tell.
 7 (Playing Video)
 8 THE WITNESS: I think he said "I will."
 9 BY MR. MCNUTT:
 10 Q. I was just going to ask you about that.
 11 So he said get on your stomach, and then
 12 Tashii Farmer clearly said, "I will."
 13 Going back to that, "Okay. Okay, sir." Do
 14 you think that was Tashii?
 15 A. I think that was Tashii Farmer now.
 16 Q. You do? Okay. I'm going to play that
 17 again because I don't think it is but you're
 18 answering the question.
 19 (Playing Video)
 20 THE WITNESS: He said, "I will. I will."
 21 BY MR. MCNUTT:
 22 Q. Is that "Okay, sir" --
 23 A. I think that's him.
 24 Q. Okay. Fair enough.
 25 (Playing Video)

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* * * Videotaped Deposition * * *

40 (Pages 154 to 157)

Page 154

1 BY MR. MCNUTT:

2 Q. Now, let's play it a little bit more.

3 Now, you hear the tick, tick, tick, tick,
4 tick of the Taser, correct? And the various phrases,
5 you understand it to be drive stun or is he still
6 cycling it? What would you call that?7 A. I think it sounds like he's cycling it
8 again.9 Q. Now, did Tashii Farmer prone out in NMI,
10 neuromuscular incapacitation?11 A. He didn't prone out, but it looked like he
12 was shaking.

13 Q. It looked like Tashii Farmer was shaking?

14 A. Yeah. That's what it looked like to me.

15 Q. I'm not following you in terms of he was
16 shaking. What does that...

17 A. When I watch the video --

18 Q. The whole thing is shaking.

19 A. When he was cycling it, he did not go to
20 the --

21 Q. The NMI?

22 A. The NMI that we're looking for, but it
23 looked like it was affecting him somewhat is my
24 point.

25 Q. I understand your answer now. I didn't

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1 assistance?

2 A. Sure.

3 Q. Now, is Ken on the hook for any of the
4 commands that they, the security guards, gave Tashii
5 that conflicted with his commands?

6 MR. LAGOMARSINO: Form.

7 THE WITNESS: Is he responsible for what
8 they say?

9 MR. LAGOMARSINO: Form.

10 BY MR. MCNUTT:

11 Q. Yes.

12 A. Well, he asked them for help, okay? If you
13 ask someone for help, you need to tell them exactly
14 what you want them to do. Which he didn't, that I
15 remember, communicate very well.16 And so that led to the conflicting
17 commands.

18 Q. So in the middle --

19 A. I think we're going to hear.

20 Q. In the middle of the fight, Ken didn't
21 supervise the Venetian security guards very well.22 A. Well, "Help me. Can you give me a hand?
23 Can you give me some help?" Right?24 Q. I think he said give me a hand here or
25 something like that.

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1 understand it prior to that.

2 (Playing Video)

3 BY MR. MCNUTT:

4 Q. So did you hear the "help me out" that Ken
5 said?

6 A. Yes.

7 Q. And then we're going to start to see, see
8 the legs in the left side of the screen here?

9 A. Yes.

10 Q. And then you'll see other -- these officers
11 have testified that they're Venetian officers that
12 approach --

13 A. Venetian security?

14 Q. Yes, sir. So we still don't have any Metro
15 officers.

16 A. Right.

17 Q. And Ken calls out for them to help.

18 Do you think, is it common for law
19 enforcement officers to ask civilian security guards
20 for assistance?

21 A. Sure.

22 Q. In this circumstance where they're coming
23 from the Venetian?

24 A. Yes.

25 Q. So it was okay for Ken to ask for their

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1 A. Whatever he said, you know, obviously,
2 we're looking back now, but I would prefer, hey, we
3 need to get cuffs on this guy. Something to give
4 some kind of direction.5 Q. But nothing he did was out of policy at
6 this point?

7 A. No.

8 (Playing Video)

9 BY MR. MCNUTT:

10 Q. Now, at this point Ken Lopera is not in
11 physical contact, but one of the officers, the
12 security officers were, correct?

13 MR. LAGOMARSINO: Objection. Form.

14 THE WITNESS: Correct.

15 BY MR. MCNUTT:

16 Q. And we're at 2:23?

17 MR. LAGOMARSINO: Form.

18 THE WITNESS: It sounds like he's cycling
19 again.

20 BY MR. MCNUTT:

21 Q. Can you tell from that -- and I can back it
22 up at any point and watch --23 A. It doesn't look like the probes are working
24 like they were earlier.

25 MR. LAGOMARSINO: I'm just going to make an

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41 (Pages 158 to 161)

Page 158	Page 160
<p>1 objection that at the point where it stopped, there's 2 no depiction of physical contact between the security 3 officer and Tashii Farmer. 4 MR. ANDERSON: That's correct. At the 5 point where it was stopped. The question was just 6 prior to that. 7 (Playing Video) 8 BY MR. MCNUTT: 9 Q. Do you hear that, "Okay, sir. Okay, sir"? 10 A. Yes. 11 Q. Who is that from? 12 A. I thought that was Tashii Farmer again. 13 Q. Okay. 14 (Playing Video) 15 BY MR. MCNUTT: 16 Q. So we're at 2:32. 17 And this is about the point where we 18 know -- well, according to Detective Alsup, this is 19 where he's holstering up the ECD. So I'm going to 20 back it up so you can see. 21 Let me ask you if you can see that. We're 22 at 2:24. 23 Tell me when he holsters up the ECD. 24 (Playing Video) 25</p>	<p>1 Q. It's 2:33, and I'm going to point it over 2 Ken Lopera's collar. 3 A. Okay. 4 Q. Do you see that? And do you see his thumb? 5 So this is clearly his right hand, correct? 6 A. Okay. 7 (Playing Video) 8 BY MR. MCNUTT: 9 Q. Did you hear that strike? 10 MR. LAGOMARSINO: Objection. Form. 11 THE WITNESS: I heard something that 12 sounded like a strike, but I didn't see it on the 13 video. 14 BY MR. MCNUTT: 15 Q. What do you think it was? 16 MR. LAGOMARSINO: Objection. Form. 17 THE WITNESS: I don't know. 18 BY MR. MCNUTT: 19 Q. What do you think could have made that 20 sound? 21 MR. LAGOMARSINO: Same objection. 22 THE WITNESS: I don't know. I'm guessing. 23 BY MR. MCNUTT: 24 Q. Do you know who Detective Casey Kirkegard 25 is?</p>
Page 159	Page 161
<p>1 BY MR. MCNUTT: 2 Q. So I just stopped it at 2:31. Can you see 3 Tashii Farmer's hands? 4 A. Yes. 5 Q. What are his hands doing? 6 A. They're moving around behind his back. 7 Q. Are his hands being restrained? 8 A. No. 9 Q. And is that -- are they behind his back or 10 in front of him? 11 A. I don't know. It's kind of blurry right 12 there, but it looks like they were behind his back 13 and they've moved now to the side. I don't know. 14 Q. Now, tell me if at any point -- how would 15 you describe this resistance? 16 A. To me that's still active because this is 17 common for people that don't want to be handcuffed. 18 He just doesn't want to get the handcuffs on, and 19 he's moving his hands so you can't handcuff him. 20 (Playing Video) 21 BY MR. MCNUTT: 22 Q. Do you see Tashii Farmer's hand in the 23 video? 24 A. No. Right now where you've got it stopped 25 I don't see it.</p>	<p>1 A. Yes. From CIRT. 2 Q. Yeah. I asked her that question. She said 3 it was the wind. That's what she said. 4 A. Well, I don't think it was the wind. 5 Q. Do you think it would have been Tashii 6 Farmer punching Ken Lopera? 7 MR. LAGOMARSINO: Form. 8 THE WITNESS: It could have been. But it 9 could have been Ken Lopera or one of the security 10 guards punching someone. 11 BY MR. MCNUTT: 12 Q. Okay. 13 A. It sounds like something hitting clothing. 14 Q. And something hitting clothing that the 15 body-worn cam mic picked up, correct? 16 A. Yes. 17 Q. So were you ever a detective? 18 A. Yes. 19 Q. So would that imply to you that the strike 20 landed near the body-worn cam mic? 21 MR. LAGOMARSINO: Form. 22 THE WITNESS: No, you can't tell. 23 BY MR. MCNUTT: 24 Q. But we know Tashii Farmer's right hand was 25 free in those seconds.</p>

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42 (Pages 162 to 165)

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1 MR. LAGOMARSINO: Objection. Form.
 2 BY MR. MCNUTT:
 3 Q. Isn't that true?
 4 A. Well, we saw it on video that it was free,
 5 but it doesn't show it coming towards Lopera or
 6 any -- I mean, I can't evaluate just the noise.
 7 Q. But don't we always evaluate partial
 8 evidence? Isn't that what we call circumstantial
 9 evidence?
 10 MR. LAGOMARSINO: Form.
 11 BY MR. MCNUTT:
 12 Q. I grant you that we don't have a freeze
 13 frame of Tashii Farmer punching Ken Lopera, but we
 14 see his hand free and then we hear a strike hit Ken
 15 Lopera's body-worn cam.
 16 A. I can't go that far and guess that.
 17 (Playing Video)
 18 BY MR. MCNUTT:
 19 Q. So do you see how the body -- the camera is
 20 very shaky and moving around?
 21 A. Yes.
 22 Q. Does that imply to you that Tashii Farmer
 23 is complying with Ken Lopera's commands to get on his
 24 stomach and stay still?
 25 A. The only thing it implies to me is Ken

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1 Q. I didn't ask you if you could see it. I
 2 just said coupled with the fact that that's what Ken
 3 said in his CIRT statement.
 4 A. Yeah. I can only go by what I see. And
 5 that was, you know, this is all things that we looked
 6 at and talked about.
 7 You know, the officer has a perception and
 8 he reports what he saw and what he did for use of
 9 force and it has to be justified.
 10 Now, what I see is someone that doesn't
 11 want to be handcuffed. He may or may not have thrown
 12 one punch, but he still is resisting his hands being
 13 placed behind his back, which is not to me aggressive
 14 resistance. It's someone who doesn't want to be
 15 handcuffed, which we see almost all the time.
 16 Q. So let's go with one hypothetical that
 17 there was no aggressive resistance whatsoever.
 18 There's just active resistance, correct?
 19 A. Right.
 20 Q. Was -- all of Ken's use of force up to this
 21 point was within policy, correct?
 22 MR. LAGOMARSINO: Objection. Form.
 23 THE WITNESS: If you also agree that the
 24 Taser was justified -- first of all, no. Because the
 25 Taser cycles were too many compared to the three it

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1 Lopera is moving his arm.
 2 Q. Okay. Why his arm? What do you mean?
 3 A. Because his body camera is attached to his
 4 lapel on his shoulder.
 5 Q. How many officers participated in
 6 handcuffing Tashii Farmer?
 7 A. I believe four.
 8 Q. Based upon that fact alone, do you think
 9 Tashii Farmer was resisting throughout the
 10 handcuffing process?
 11 A. Was he resisting being handcuffed? Yes.
 12 Q. Is it possible that what we saw at around
 13 2:34 was a strike by Tashii Farmer?
 14 A. Is it possible?
 15 Q. Yes.
 16 A. Yes.
 17 Q. And if so, wouldn't that mean that it
 18 was aggravated aggressive resistance, per the
 19 definition?
 20 A. Yeah. I guess if that is what he's
 21 saying.
 22 Q. And coupled with the fact that Ken Lopera
 23 said in his CIRT statement that Tashii Farmer was
 24 reaching to grab his Taser out of his holster?
 25 A. Well, I definitely can't see that.

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1 should have been. He should have holstered his Taser
 2 and went completely hands-on with both hands.
 3 BY MR. MCNUTT:
 4 Q. But --
 5 A. Instead of continued to use the Taser,
 6 which for the most part the extra cycles appeared
 7 like it didn't work like the first three.
 8 So why would he keep doing it?
 9 Q. He was in the heat of the moment and --
 10 A. Right.
 11 Q. -- and sympathetic response --
 12 A. Right. If that was all that happened, then
 13 he would get some retraining.
 14 Q. So assuming we're just in active resistance
 15 here, and Ken Lopera is about to employ the LVNR or
 16 some form of a neck restraint, correct? The LVNR is
 17 authorized in this low level use of force for active
 18 resistance, correct? At that time?
 19 A. At that time, yes.
 20 Q. Do you know the policy, if it's per Metro
 21 policy, for the officer employing the LVNR to keep
 22 the encircling arm in place until the suspect is
 23 handcuffed?
 24 A. Yes.
 25 Q. So if Ken Lopera in the video has his

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* * * Videotaped Deposition * * *

43 (Pages 166 to 169)

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1 encircling arm around Tashii Farmer's neck, and as
 2 you testified earlier, we don't know how much, if
 3 any, pressure was being applied, but he's authorized
 4 and per Metro policy to keep that in place until
 5 Tashii Farmer is in handcuffs, correct?
 6 A. That's what policy says.
 7 Q. Okay. And do you know if he did that in
 8 this case?
 9 A. Did he do that or did he get handcuffed?
 10 Q. No. Did Ken Lopera keep his encircling arm
 11 in place until Tashii Farmer was handcuffed?
 12 A. Yes.
 13 MR. MCNUTT: Andre, let me look at my
 14 notes, but I'll turn you over to him for any
 15 follow-up, and then I may have one or two to finish
 16 out.
 17 MR. ANDERSON: I have about ten minutes.
 18 I'll go before Andre.
 19 MR. MCNUTT: Thank you for your time.
 20 THE WITNESS: No problem.
 21 THE VIDEOGRAPHER: The time is
 22 approximately 2:48 p.m. We are going off the
 23 record.
 24 (A recess was taken from 2:48 p.m.
 25 to 2:50 p.m.)

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1 BY MR. ANDERSON:
 2 Q. In your experience as an officer, should
 3 Crumrine have been able to tell how much pressure was
 4 being applied to the neck?
 5 A. If it was applied correctly, he should be
 6 able to tell.
 7 Q. Is it possible that the encircling arm was
 8 just in the area of the neck and not applying any
 9 pressure?
 10 A. Yes.
 11 Q. When Sergeant Crumrine arrived, what should
 12 have been his initial focus? What should have been
 13 his first goal with respect to Mr. Farmer?
 14 A. The -- he should be ensuring the tactics
 15 used by the officers are effective. And if not,
 16 change tactics.
 17 Q. And you've talked about Metro has a policy
 18 with respect to duty to intervene, correct?
 19 A. Yes.
 20 Q. Is giving verbal commands a form of
 21 intervention?
 22 A. Yes.
 23 Q. Is going hands-on to assist with
 24 handcuffing a form of intervention?
 25 A. Yes.

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1 THE VIDEOGRAPHER: The time is
 2 approximately 2:50 p.m. We're back on the record.
 3
 4 EXAMINATION
 5 BY MR. ANDERSON:
 6 Q. Chief McGrath, I just want to follow up on
 7 some testimony that you just gave to Mr. McNutt.
 8 You stated that it's policy that when an
 9 LVNR or neck restraint is being performed that it's
 10 policy to keep the encircling arm in place until
 11 handcuffing is complete, correct?
 12 A. Yes.
 13 Q. You also testified earlier that from your
 14 watching of the video, you could not tell at any time
 15 how much pressure, if any, Lopera was applying to
 16 Mr. Farmer's neck; is that correct?
 17 A. Correct.
 18 Q. Based upon your training and experience and
 19 your review of this case, when Officer Crumrine first
 20 arrived, would he have been able to tell how much
 21 pressure, if any, Officer Lopera was applying to
 22 Mr. Farmer's neck?
 23 MR. LAGOMARSINO: Form.
 24 THE WITNESS: No. He could not. I could
 25 not tell.

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1 Q. Did Sergeant Crumrine give verbal commands?
 2 A. I'm sorry, I was moving.
 3 Q. You're fine. Did Sergeant Crumrine give
 4 verbal commands to Officer Lopera?
 5 A. Yes.
 6 Q. Did Sergeant Crumrine go hands-on and
 7 attempt to facilitate handcuffing?
 8 A. Yes.
 9 Q. Do you agree in this case that Sergeant
 10 Crumrine actually intervened?
 11 A. He did some intervention. I wish he would
 12 have done more.
 13 Q. Why do you wish he would have done more?
 14 A. Because we expect more of our supervisors.
 15 Q. Were you holding Sergeant Crumrine to a
 16 higher standard than, say, Officer Tran and Flores?
 17 A. Yes.
 18 Q. And is that based upon Las Vegas
 19 Metropolitan Police Department's policies?
 20 A. Well, it's based on several things. First
 21 of all, Officer Tran and Flores were on different
 22 parts of Officer Farmer (sic), and they're focused
 23 on what they're doing to get him in custody. And
 24 Officer -- Sergeant Crumrine is seeing the overall
 25 use of force, and so he should take charge of

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44 (Pages 170 to 173)

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1 that scene and start directing people of what to
2 do.

3 Q. So your criticisms of Sergeant Crumrine are
4 based upon his actions as a supervisor and not as a
5 regular officer?

6 A. That's correct.

7 Q. If you were evaluating him as a regular
8 officer, would you believe that he intervened in this
9 case?

10 A. Yes.

11 Q. And did you believe that Tran and Flores
12 intervened by facilitating handcuffing?

13 A. Yes.

14 Q. Then you were asked a question earlier by
15 Mr. Lagomarsino where you said at some point you
16 would like to -- you would like to see an officer
17 physically pry the arms off the neck of the suspect;
18 is that fair?

19 A. Yes.

20 Q. Okay. Would an officer ever pry the arms
21 off the neck of a suspect before handcuffing was
22 complete?

23 A. On an LVNR?

24 Q. On an LVNR, yes.

25 A. Probably not.

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FURTHER EXAMINATION

1 BY MR. LAGOMARSINO:

2 Q. These are crime scene photos that were
3 taken by Metro after the fact, starting with LVMPD
4 2254 and going all the way through and inclusive of
5 2273.
6

7 These pictures appear to be mostly from the
8 back of the house but around the Coffee Bean & Tea
9 Leaf where the initial interaction occurred; is that
10 correct?

11 A. Yes.

12 Q. Do you see anywhere in these almost 20
13 pictures where it says that that's a restricted area
14 or that it's employee only?

15 A. No.

16 (Exhibit 11 was marked for
17 identification.)

18 BY MR. LAGOMARSINO:

19 Q. I'm handing you some photos that were taken
20 after the fact of Officer Lopera's Taser. They're
21 Bates for the record 2309, 2310 and 2311.

22 I'll have you look at 2310. What does 2310
23 depict?

24 A. The sticker that's on the Taser.

25 Q. And it has a warning in capital letters

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1 Q. Would you want the suspect to be handcuffed
2 before you took any physical intervention against
3 another officer?

4 A. Yes.

5 Q. In your review of the evidence in this case
6 in your role in the use of force or in tactical
7 board, when Sergeant Crumrine arrived, did he have
8 any information that would have led him to believe
9 that excessive force was being used based upon what
10 he perceived?

11 A. No.

12 Q. When Sergeant Crumrine and Officers Flores
13 and Tran arrived, would they have been justified in
14 believing that Ken Lopera was using reasonable
15 force?

16 A. Yes.

17 Q. So it's reasonable for an officer to assume
18 that other officers have acted reasonably prior to
19 their arrival?

20 A. Yes.

21 MR. ANDERSON: I have nothing further.

22 THE WITNESS: Very efficient.

23 MR. ANDERSON: Thank you.

24 (Exhibit 10 was marked for
25 identification.)

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1 with an exclamation point in orange and yellow,
2 correct?

3 A. Yes.

4 Q. And is one of the warnings that the Taser
5 can cause death or serious injury?

6 A. No. Unless I'm missing it.

7 Q. Go to the second bullet down. So I'll
8 reask the question.

9 A. Under warning?

10 Q. Under warning does it say that --

11 A. Oh, there it is.

12 Q. -- it can cause death --

13 A. It can cause death or serious injury.

14 Q. It says that on the warning, correct?

15 A. Yes.

16 Q. Do you believe that warning to be false?

17 MR. ANDERSON: Objection. Form.

18 THE WITNESS: Do I believe it to be false?

19 No.

20 BY MR. LAGOMARSINO:

21 Q. So in certain situations, the use of a
22 Taser apparently can be considered deadly force? Let
23 me rephrase.

24 I'm not saying how Metro characterizes or
25 classifies deadly force. I'm just saying in everyday

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* * * Videotaped Deposition * * *

46 (Pages 178 to 181)

Page 178

1 BY MR. LAGOMARSINO:

2 Q. Just so we get our bearings, if somebody
3 has a beer and alcohol is in their system, do you
4 consider them to be under the influence?5 A. They're yes, under the influence, but
6 there's nothing that you could say -- in other words,
7 you're under the influence but you haven't reached
8 the illegal point for your driving.9 Q. Now, there was some testimony about Officer
10 Lopera talking to CIRT and giving a statement and
11 then not speaking at the use of force board.12 Did Officer Lopera, to your understanding,
13 invoke his Fifth Amendment right against
14 self-incrimination by not testifying at the use of
15 force board?16 A. I don't know his reason for not testifying.
17 And I wasn't involved in those discussions. But I
18 assume that's it because the criminal case was still
19 ongoing.20 Q. Okay. Officer Lopera and his lawyers have
21 hired an expert that characterized Officer Lopera's
22 conduct as compassionate.23 Do you characterize Officer Lopera's
24 conduct as compassionate?

25 MR. MCNUTT: Objection. Form.

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1 Q. Based probably -- well, based on the
2 evidence that we have in front of us, you've never
3 heard any testimony or seen any evidence that Officer
4 Lopera said stop to Tashii Farmer before they got to
5 the driving area; is that correct?

6 A. That's correct.

7 Q. And the mere fact that a suspect may not be
8 complying with a command does not necessarily equate
9 to a use of force greater than what's allowed under
10 the use of force continuum; is that correct?

11 A. That's correct.

12 Q. Does a suspect who is being tased who is
13 saying, "okay, I will," and "okay, sir," indicate
14 compliance to you?15 A. Well, verbally he's saying that he's going
16 to comply. And I believe that's what CIRT meant when
17 they said they didn't give him enough opportunity to
18 comply.19 Q. Because I think your testimony was Lopera's
20 commands taken as a whole and not in two-second clips
21 were very confusing, correct?

22 MR. MCNUTT: Objection. Form.

23 THE WITNESS: So there were some confusing
24 commands and there was some quick cycles of the ECD
25 that not only I thought, but the rest of the board

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1 THE WITNESS: No.

2 BY MR. LAGOMARSINO:

3 Q. Now, you've heard a number of questions
4 about was there a right to detain him and did he
5 comply and could he have chased him. I'm not going
6 to ask about that. I'm going to ask some very simple
7 questions.8 Does the right to detain a suspect equate
9 to the right to inflict excessive force on that
10 suspect?

11 MR. MCNUTT: Objection. Form.

12 THE WITNESS: There's no right to inflict
13 excessive force for any reason.

14 BY MR. LAGOMARSINO:

15 Q. There were some questions before you
16 watched the video earlier in Mr. McNutt's questioning
17 where it was asked of you on the body cam video did
18 Lopera say "stop." I just want to make sure we're
19 clear for the record. And you said yes. I just want
20 to make sure you're talking about he used the word
21 "stop" out in the driving area, not in the stairwell
22 or in the Venetian, that we can tell?23 A. Yes. You're right. I didn't see it
24 anywhere until he got through -- out of the Venetian
25 building.

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1 who reviewed the case thought was excessive.

2 BY MR. LAGOMARSINO:

3 Q. I wanted to clarify on the issue of the
4 strikes. Were you saying that it was unclear that
5 the 10 to 12 strikes completely missed Farmer, or
6 that you're just not clear on where they hit Farmer?

7 A. I'm not clear the definition of a strike.

8 Is a strike a punch thrown or a punch connecting? So
9 if you're saying there was 10 to 12 punches thrown, I
10 agree. If you're saying 10 to 12 strikes, I don't
11 see it on the video. I can't tell how many hit and
12 how many missed.

13 Q. Have you -- strike that.

14 Detective Alsup testified that he did a
15 frame-by-frame review of the video to assess the
16 number of strikes. Did you do a frame-by-frame
17 review of the video?18 A. I did not, but CIRT presented it frame by
19 frame. But when I watched the video realtime, I
20 don't see that many strikes hitting him.21 Q. Okay. Did you, as part of your review,
22 assess the autopsy photos that would show bruising on
23 different parts of Tashii Farmer's body?

24 A. Yes.

25 Q. I'll give you a hypothetical, all right?

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* * * Videotaped Deposition * * *

47 (Pages 182 to 185)

Page 182

1 If you have a suspect who is observed to be
 2 unconscious after a period of time in the LVNR, and
 3 the officer is not releasing the LVNR despite being
 4 told to do so, does it satisfy the duty to intervene
 5 by simply saying "stop" and not doing anything else?

6 MR. MCNUTT: Objection. Form.

7 MR. ANDERSON: Objection. Form.

8 THE WITNESS: So we would prefer that
 9 officers stopped when they were told to. And if they
 10 don't stop and the use of force is excessive, we
 11 expect officers to intervene physically to stop them.
 12 And not just on the LVNR. If someone was punching
 13 someone and they didn't stop, you wouldn't just let
 14 them keep punching them. You would grab them.

15 BY MR. LAGOMARSINO:

16 Q. Now, there was some testimony about whether
 17 you could tell if Lopera was rear-naked choking or
 18 LVNRing. Okay?

19 However, on the body-worn camera, Lopera
 20 used both terms. He said that he choked him out,
 21 correct?

22 A. Yes.

23 Q. And he also said that, "I rear-naked his
 24 ass," correct?

25 A. Yes.

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1 A. Yes.

2 Q. Did you have a chance to review the
 3 transcript of that deposition after you gave the
 4 deposition?

5 A. Yes. This morning.

6 Q. You reviewed it again this morning?

7 A. Yes.

8 Q. Do you have any changes that you would make
 9 to that deposition transcript?

10 A. Nothing other than what I talked about
 11 today, which was I don't have a bureau that was
 12 assigned to me that was assigned then.

13 Q. Understood.

14 Do you have any data which indicates that
 15 civilians are confused that officers that wear the
 16 green uniforms don't recognize those individuals to
 17 be law enforcement officers?

18 A. No.

19 Q. When you watched Ken Lopera's body-worn cam
 20 at any time and after Tashii Farmer fled down the
 21 employee-area hallway, did you see any other patrons
 22 in those hallways?

23 A. No.

24 Q. Was Tashii Farmer in view when Ken Lopera
 25 was running through the hallways and the stairwells?

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1 Q. And that's part of all the evidence that
 2 you have to consider, correct?

3 A. Yes.

4 Q. And if a suspect is passed out or
 5 unconscious, does that indicate that there was
 6 pressure being applied to his neck?

7 MR. ANDERSON: Objection. Form.

8 BY MR. LAGOMARSINO:

9 Q. To you?

10 A. While someone's applying the LVNR?

11 Q. Or the restraint, either one, yeah.

12 A. Yes.

13 MR. LAGOMARSINO: No further questions.

14 MR. MCNUTT: I just have a couple of
 15 questions.

16 FURTHER EXAMINATION

17 BY MR. MCNUTT:

18 Q. You gave another deposition about these
 19 same events in the case we referred to as the
 20 Estate of Tashii Farmer versus Las Vegas Metro,
 21 correct?

22 A. Yes.

23 Q. And that deposition was December 27th,
 24 2017, correct?

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1 A. No. He lost view of him.

2 Q. Right. So there was a question about did
 3 Ken Lopera give a command for Tashii Farmer to stop.
 4 Do you typically yell for someone to stop when you
 5 can't see them?

6 A. Not typically.

7 Q. With respect to a suspect's hands versus
 8 what they're saying, which matters more to you, what
 9 they're doing with their hands or what they're saying
 10 with their mouth in terms of compliance?

11 A. What they're doing.

12 Q. With their hands, correct?

13 A. Yes.

14 Q. What's the definition of "excessive force"?

15 MR. ANDERSON: Objection. Form.

16 BY MR. MCNUTT:

17 Q. Roughly. Paraphrasing.

18 A. Excessive force is the force applied that
 19 is outside of policy in excess of what is required
 20 to gain compliance. That's off the top of my head.

21 Q. Sounds good. At what point in these
 22 events did Las Vegas Metro gain compliance of
 23 Tashii Farmer?

24 A. At what point did we gain compliance?

25 Q. From Tashii Farmer.

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* * * Videotaped Deposition * * *

48 (Pages 186 to 189)

Page 186

1 A. At some point when he was on the ground
2 being LVNR'd.
3 Q. Okay. I don't know that we marked it, but
4 it was the arrest report. Is that Exhibit B? Could
5 you please -- and turn to page 5 of 8.
6 A. Yes.
7 Q. Do you see where, what you recognize the
8 numbers along the side to be the timestamp from the
9 body-worn cam. That's what Detective Alsup testified
10 to, correct? Or do you know that?
11 A. I'm sorry, can you --
12 Q. Detective Alsup said --
13 A. I was reading your --
14 Q. That's okay. Detective Alsup put the
15 timestamps from the body-worn cam down the left side
16 in the column.
17 A. I see it.
18 Q. So if you go down to three minutes and one
19 second, Sergeant Crumrine arrived and said, "Put your
20 hands behind your back."
21 Do you see that?
22 A. Yes.
23 Q. 3:13 Officer Lopera says, "Is he out yet?"
24 3:15 Farmer gasps. 3:18 Lopera asked, "Is he out
25 yet?" 3:19 Officer Lopera asked, "Is he out yet?"

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1 FURTHER EXAMINATION
2 BY MR. ANDERSON:
3 Q. Chief McGrath, do you agree that once
4 handcuffing was completed, all force stopped by all
5 the officers?
6 A. Yes.
7 Q. So if an officer during the handcuffing
8 process were to issue a command to loosen up or to
9 let him go to Officer Lopera, you would expect -- or
10 you would hope Officer Lopera would follow that
11 command, correct?
12 A. Yes.
13 Q. Would it be reasonable for that officer to
14 assume while they're still intending to handcuff the
15 suspect that Officer Lopera did hear the command and
16 did, quote, loosen up or, quote, let him go by
17 releasing the pressure but not releasing the
18 encircling arm?
19 A. Yes.
20 Q. In fact, it would be policy that he would
21 keep the encircling arm around the neck, correct?
22 A. Yes.
23 Q. So it's justifiable for an officer who
24 gives such a command to loosen up or let go to
25 assume that Officer Lopera followed that command,

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1 At any point up to 3:19, and take a minute
2 and review the prior pages if you want, has Officer
3 Lopera been told by any other Metro officer to
4 release the hold or do anything different to
5 Tashii Farmer?
6 A. No.
7 Q. Where is the first time Ken Lopera is given
8 a command to do something different?
9 A. Well, at 3:25 Officer Tran says, "Let him
10 go."
11 Q. And we now understand that that actually
12 wasn't Officer Tran, that was Officer Crumrine.
13 That's been their testimony.
14 And then one second later Lopera says,
15 "Are you sure?" And Tran or Crumrine replies,
16 "Yeah."
17 Do you see that?
18 A. Yes.
19 Q. Do you think that one second, assuming
20 that's accurate, is too long of a delay for Ken
21 Lopera to respond to the command to let him go?
22 A. Do I think one second is too long? No.
23 MR. MCNUTT: No further questions.
24 MR. ANDERSON: I just have about three.
25 I'll be quick.

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1 despite the fact his encircling arm was still on the
2 neck?
3 A. Yes.
4 MR. ANDERSON: Okay. Thank you. No
5 further questions.
6
7 FURTHER EXAMINATION
8 BY MR. LAGOMARSINO:
9 Q. Just a couple more.
10 The question was asked did Officer Lopera
11 see Farmer in the context of calling out for him to
12 stop.
13 Do you remember that?
14 A. Yes.
15 MR. MCNUTT: In the hallway.
16 MR. LAGOMARSINO: In the hallway.
17 BY MR. LAGOMARSINO:
18 Q. Did you -- did you see Officer Lif present
19 in the hallway --
20 A. No.
21 Q. -- when he yelled out for Officer Lif?
22 A. No. Officer Lif didn't follow him in the
23 hallway.
24 Q. In terms of what's written here on the page
25 about who said what --

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* * * Videotaped Deposition * * *

49 (Pages 190 to 193)

Page 190	Page 192
<p>1 A. Yes.</p> <p>2 Q. -- would you defer to the video, an</p> <p>3 analysis of the video, or would you defer to the</p> <p>4 page?</p> <p>5 A. Well, I would hope that this page reflects</p> <p>6 what's in the video.</p> <p>7 Q. But if the video depicts other statements</p> <p>8 that are made, and they happened not to be here,</p> <p>9 would you defer to the video?</p> <p>10 MR. MCNUTT: Objection. Form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. LAGOMARSINO:</p> <p>13 Q. If somebody has been placed in an LVNR or</p> <p>14 neck restraint and they're released, and they're</p> <p>15 unconscious, and they're not reviving, would you</p> <p>16 expect your officers to immediately start providing</p> <p>17 medical attention?</p> <p>18 MR. MCNUTT: Objection. Form.</p> <p>19 MR. ANDERSON: Join.</p> <p>20 THE WITNESS: They should attempt to render</p> <p>21 medical aid. But they are required to call for</p> <p>22 medical.</p> <p>23 MR. LAGOMARSINO: No further questions.</p> <p>24 THE VIDEOGRAPHER: This concludes the video</p> <p>25 deposition of Deputy Chief John McGrath.</p>	<p>1 CERTIFICATE OF DEPONENT</p> <p>2 PAGE LINE CHANGE REASON</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 *****</p> <p>19 I, DEPUTY CHIEF JOHN MCGRATH, deponent herein,</p> <p>20 do hereby certify and declare under penalty of</p> <p>21 perjury the within and foregoing transcription to be</p> <p>22 my deposition in said action; that I have read,</p> <p>23 corrected and do hereby affix my signature to said</p> <p>24 deposition.</p> <p>25</p> <p style="text-align: center;">DEPUTY CHIEF JOHN MCGRATH Deponent</p>
<p style="text-align: center;">Page 191</p> <p>1 The original media of today's testimony</p> <p>2 will remain in the custody of Las Vegas Legal</p> <p>3 Video.</p> <p>4 The time is approximately 3:21 p.m. and we</p> <p>5 are going off the record.</p> <p>6 - - -</p> <p>7 (The videotaped deposition was</p> <p>8 concluded at 3:21 p.m.)</p> <p>9 - - -</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">Page 193</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 I, the undersigned, a Certified Shorthand</p> <p>3 Reporter of the State of Nevada, do hereby certify:</p> <p>4 That the foregoing proceedings were taken</p> <p>5 before me at the time and place herein set forth;</p> <p>6 that any witnesses in the foregoing proceedings,</p> <p>7 prior to testifying, were duly sworn; that a record</p> <p>8 of the proceedings was made by me using machine</p> <p>9 shorthand which was thereafter transcribed under my</p> <p>10 direction; that the foregoing transcript is a true</p> <p>11 record of the testimony given to the best of my</p> <p>12 ability.</p> <p>13 Further, that before completion of the</p> <p>14 proceedings, review of the transcript [X] was</p> <p>15 [] was not requested pursuant to NRCP 30(e).</p> <p>16 I further certify I am neither financially</p> <p>17 interested in the action, nor a relative or employee</p> <p>18 of any attorney or party to this action.</p> <p>19 IN WITNESS WHEREOF, I have this date</p> <p>20 subscribed my name.</p> <p>21</p> <p>22 Dated: August 13, 2019</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">GALE SALERNO, RMR, CCR #542</p>

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* * * Videotaped Deposition * * *

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1 CERTIFICATE OF REPORTER

2 I, the undersigned, a Certified Shorthand
3 Reporter of the State of Nevada, do hereby certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were duly sworn; that a record
8 of the proceedings was made by me using machine
9 shorthand which was thereafter transcribed under my
10 direction; that the foregoing transcript is a true
11 record of the testimony given to the best of my
12 ability.

13 Further, that before completion of the
14 proceedings, review of the transcript [X] was
15 [] was not requested pursuant to NRCP 30(e).

16 I further certify I am neither financially
17 interested in the action, nor a relative or employee
18 of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21

22 Dated: August 13, 2019

23

24

25


GALE SALERNO, RMR, CCR #542